

REPORT TO THE KITTERY TOWN COUNCIL – WI AGREEMENT WORKING GROUP

RESPONSIBLE INDIVIDUAL: Beers/Reid

Date: July 11, 2016

SPONSOR: Beers

SUBJECT: Wood Island Agreement Repair & Maintenance Agreement - Amendment

BACKGROUND:

- Previous RTC & working group charge, Mar 15, 2016
- Previous RTC - Progress update, May 04, 2016
- Previous RTC - Progress update, May 13, 2016
- Previous RTC - Progress update, May 31, 2016

FACTS BEARING ON THE EQUATION:

- Program of Utilization, Wood Island (*Atch 1*)
- NPS Concession Agreement Guidance (*Atch 2*)
- Wood Island Agreement Signed 10-18-13 (*Atch 3*)
- PA - National Maritime Heritage Grant Program(*Atch 4*)
- National Registry Assessment, Wood Island Station(*Atch 5*)
- Maine – Kittery Preservation Covenant Agreement, signed (*Atch 6*)
- Programmatic Agreement - National Maritime Heritage Grant Program (*Atch 7*)
- Submerged Lands Lease, Wood Island, 02-26-16 (*Atch 8*)
- MDEP_WILSSA Permit L26596ANBNCN (*Atch 9*)
- Contract Documents for Cleanup & Exterior, May 16, 2016 (*Atch 10*)

NOTE: *These attachments were previously provided and not included in this report packet and are available on request.*

CURRENT SITUATION:

- Jan 25, 2016 Repair Agreement, as signed (*encl 1*); Proposed Agreement with changes tracked (*encl 2*); Proposed Agreement in final view version (*encl 3*); NPS PM response (*encl 4*)
- Exhibits attached to Agreement as noted therein
- Notable revisions:
 - Title changed to better reflect nature of agreement
 - Term changed to expire upon issue of Certificate of Occupancy for Museum
 - Financial Security Package explained in more detail (greater than just a Line of Credit)
 - Contract Documents for Cleanup & Exterior Rehabilitation incorporated by reference (SOW excerpts – Exhibit C) and planned Pier, Marine Railway, Seawall & Mooring projects (Exhibit D)
 - Liens changed to premises vs facilities
 - Waiver clause revised to use NPS language
 - Notice clause adds SHPO
 - Approximately three dozen revisions made – 31 grammar, punctuation, capitalization – 5 clarifying details of original language.

REPORT TO THE KITTELY TOWN COUNCIL – WI AGREEMENT WORKING GROUP

39 **RECOMMENDATION:** Deliberation and consideration for approval of Repair & Maintenance
40 Agreement, as amended.

Enclosures

- 41 1. Wood Island Maintenance Agreement, signed
- 42 2. Repair Agreement – Amended – Tracked Changes
- 43 3. Repair Agreement – Final - Proposed
- 44 4. NPS PM - Response

Attachments (to Repair Agreement)

- 45 1. Exhibit A - Wood Island Quitclaim Deed (plus unofficial retyped copy w/ Utilization passages)
- 46 2. Exhibit B - Preservation Covenant - Signed
- 47 3. Exhibit C - SOW - Wood Island – Excerpts
- 48 4. Exhibit D - Pier, Marine Railway, Seawall Project, Drawings, Specifications/Permit - Excerpts

WOOD ISLAND LIFE SAVING STATION REPAIR, MAINTENANCE, AND USE AGREEMENT

This REPAIR, MAINTENANCE and USE AGREEMENT, hereinafter referred to as "AGREEMENT" is made and entered into this 25th day of January, 2016 by and between the Town of Kittery, hereinafter referred to as the "TOWN", and the Wood Island Life Saving Station Association, a non-profit corporation based in Kittery Point, Maine, hereinafter called the "WILSSA", collectively called "PARTIES."

WITNESSETH:

Whereas, the TOWN owns certain land, a historic lifesaving STATION and appurtenances totaling 1.25 acres, obtained by the TOWN from the United States of America, known as Wood Island Life Saving Station, and deeded to the TOWN February 27, 1973, found in Book 1985, Page 201, of the York County Registry of Deeds hereinafter referred to as the "PREMISES". A copy of said quitclaim deed is attached and hereinafter referred to as Exhibit A; and

Whereas, the TOWN and WILSSA use the term STRUCTURES to mean hereinafter the STATION (main building), shed, marine railway, pier, floats, moorings, seawalls, and wreck pole; and

Whereas, Condition No. 1 of said deed sets forth that "the property shall be used and maintained for the public purposes for which it was conveyed in perpetuity as set forth in the program of utilization and plan contained in the application submitted by the Grantee on the 25th day of October, 1972 and amended the 27th day of November 1972, which program and plan may be further amended from time to time at the request of either the Grantor or Grantee with the written recommendation and advice of the other party, and such amendments shall be added to and become a part of the original application;" and

Whereas, such program of utilization referenced above includes a statement that "the island would be used by boaters in the Piscataqua River as a place to stop for cookouts, picnics, etc. In addition, depending on the condition of present buildings it would also be maintained as a point of interest or historic site;" and

Whereas, Condition No. 3 of said deed provides that "The property will not be sold, leased, assigned or otherwise dispose of except to another local Governmental agency..." "However, nothing in this provision shall preclude the Grantee from providing related recreational facilities and services compatible with the approved application, through concession agreements entered into with third parties, provided prior concurrence to such agreements is provided in writing by the Secretary of the Interior or delegated representative"; and

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Whereas, WILSSA desires to repair or construct the structures, maintain them and use them as a Maritime Museum for the enjoyment of the public; and

Whereas, the TOWN proposes to allow the WILSSA to repair or construct the structures, maintain them and use them as a Maritime Museum for the enjoyment of the public; and

Whereas, the TOWN acknowledges that only the TOWN can fund a hazardous materials abatement of the structures and premises; the TOWN has secured \$200,000 in federal Brownfields funding; the abatement of all hazardous materials eligible for federal funding will be undertaken by TOWN with the concurrence of WILSSA in terms of planning, timing, budgeting, phasing, approach and vendor selection; and, every effort will be made by the PARTIES to create and publically advertise a scope of work as soon as practical and begin work in the spring of 2016; and

Whereas, the TOWN and WILSSA have finalized a concession agreement, as agreed by the National Park Service, that specifies the conditions under which the restored STRUCTURES will be operated for the use and enjoyment of the public by WILSSA; and

Whereas, TOWN and the Maine State Historic Preservation Office have executed a 20 year Preservation Agreement as required by the \$200,000 National Maritime Heritage grant which has been approved by National Park Service that specifies the conditions under which the restored exterior of the STATION will be maintained; and

Whereas, the legislature of the State of Maine has passed into law an appropriation for \$200,000 in funding to match the National Maritime Heritage grant and to be used for the exterior repairs of the building as soon as the hazardous materials abatement has been completed; and

Whereas, WILSSA desires to seek additional private, foundation, corporate, state and federal funding or assistance to satisfy the financing of the repairs, construction, maintenance and operation of the STRUCTURES and the TOWN agrees to promptly review, make comments to, and support applications for funding or assistance by WILSSA, or apply for such funds or assistance itself on behalf of WILSSA (such as an application for an innovative readiness training exercise from the Maine National Guard), with the expressed condition that TOWN will not pay for any funding with the exception of the hazardous materials abatement funding; and

Whereas, the TOWN agrees to allow WILSSA to create a protocol for recognizing donors and volunteers to this project; and

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Whereas, WILSSA and the TOWN agree that a nomination for National Register of Historic Places is appropriate and fitting for the historic STATION that is eligible for such listing and the TOWN agrees not to object to such a nomination and to support it; and

Whereas, Nothing in this agreement may restrict the public's access to Wood Island itself for recreational purposes year round, with the exception of areas inside designated construction sites or the maritime museum.

NOW, THEREFORE, for the reasons set forth above, and in consideration of the mutual covenants and agreements as hereinafter set forth, WILSSA agrees to undertake the repair, construction and maintenance of the STRUCTURES and the TOWN agrees to allow WILSSA to repair or construct and maintain the STRUCTURES subject to all the terms and conditions of this AGREEMENT.

1. Exclusive Authority to Repair and Construct Structures

The TOWN does hereby allow WILSSA to repair or construct the STRUCTURES. The TOWN agrees not to award contracts or work to any other individual or entity, including itself, during the term of this AGREEMENT regarding the STRUCTURES, including, but not limited to, their repair, maintenance or use and the design, scheduling and execution of same without the written approval of WILSSA.

2. Improvements to Inure to the TOWN

Improvements to the STRUCTURES as undertaken, worked on and completed by WILSSA become the sole property of the TOWN.

3. Term

This AGREEMENT is effective immediately. This AGREEMENT will expire either at the end of the term of the concession agreement or any extension thereof or 20 years after the date of the certificate of substantial completion of the exterior repairs if no certificate of occupancy has been secured by WILSSA for the PREMISES in that time, whichever occurs later.

4. Payments, Fees and Royalties

There will be no fee or tax paid by WILSSA to the TOWN or any other party for this AGREEMENT or for any matters covered by this AGREEMENT. In addition, the TOWN will impose no other costs of any kind upon WILSSA or the PREMISES during the term of this AGREEMENT including, but not limited to, real estate property taxes or special assessments.

No funds raised by WILSSA will become the property of the TOWN except in accordance with Article 17 or 18 of this Agreement. WILSSA may create and retain any royalties or payments for the use of images and descriptions of the STATION or its activities related to repairing, maintaining or operating the STATION.

5. WILSSA's and TOWN'S Records and Documents / Annual Report of Activities

With respect to all matters covered by this AGREEMENT, WILSSA'S records and documents are subject at reasonable times to inspection, review or audit by the TOWN. With respect to all matters covered by this AGREEMENT, the TOWN'S records and documents are subject at reasonable times to inspection, review or audit by WILSSA. WILSSA must provide to the TOWN a regular report of activities on an annual basis due no later than the execution date of this AGREEMENT. This report must include milestones reached, approximate contract and volunteer hours expended, funds raised, funds expended, and forward looking estimates of the tasks ahead. TOWN may use this report as it wishes, including using it in whole or in part to satisfy any reporting requirements regarding Wood Island with the National Park Service.

6. Licenses and Permits

All necessary licenses and/or permits to undertake repairs to or construction of the STRUCTURES must be obtained by WILSSA from the appropriate TOWN, State, and Federal offices. Any licenses, leases (such as a submerged lands lease with the State of Maine for the pier) or permits that require the owner of the property, rather than WILSSA, to be the applicant or signatory will be prepared by WILSSA in consultation with the TOWN and approved by the TOWN promptly. All fees for TOWN licenses, leases and/or permits and inspections will be waived for work authorized by this AGREEMENT. Consent for the issuance of any TOWN permits or permissions must not be unreasonably withheld.

7. Financial Security Package

Before undertaking any repairs or other improvements to the STRUCTURES as permitted under the terms of this AGREEMENT and to insure the satisfactory performance and completion of such repairs and improvements, WILSSA must establish an Irrevocable Letter Of Credit (LOC) with a Maine licensed bank or other comparable security or contract such as a federal grant agreement or a state appropriation with a relevant oversight agency in an amount of not less than the projected total costs of the proposed repairs and improvements as reflected in the building permit(s). The specific amount, financial institution, form and terms of the LOC or other comparable security or contract to fund the portion of the project to be completed must be approved by the Kittery Town Manager for only the purpose of assuring the financial security package meets the intent of this requirement. The Kittery Town Manager will consider in-kind contributions as a part of the financial security package.

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8. Repair

WILSSA will select, arrange, design, schedule and supervise any and all aspects of the restoration of the STRUCTURES including all construction and finish work. TOWN will secure WILSSA's concurrence in terms of planning, timing, phasing, design, budgeting, approach, and vendor selection regarding the hazardous materials abatement.

9. Inspection of Structures

The National Park Service, and the State Historic Preservation Officer and their duly authorized representatives have the right to enter into and upon the STATION at a reasonable hour for the purpose of inspection of the STRUCTURES covered by this AGREEMENT upon reasonable advance notice to WILSSA. The TOWN's Code Enforcement Officer and the TOWN's public safety personnel including Fire and Police, have the right to enter into the structures at any time to perform inspections or undertake any activities within their respective functions and jurisdictions.

10. Other Terms and Conditions

A. Indemnity and Limitation of Liability

1) WILSSA hereby agrees to indemnify, defend and hold harmless the TOWN and its respective officers, officials, agents, employees, members of boards and committees, with respect to the equipment, work and materials that WILSSA or its subcontractors, employees, agents or representatives have agreed to perform and supply under this AGREEMENT from and against all expenses, losses and claims, demands, payments, suits, actions, liabilities, recoveries, and judgments of any nature and description, other than as a result of the sole negligence of the TOWN, including reasonable attorney's fees, resulting from claims arising out of or related to any act or omission of WILSSA, its agents, employees, contractors, representatives for service or materials provided, in the work and materials that WILSSA has agreed to perform and supply under this AGREEMENT, or by reason of any suit or claim for royalties, license fees, or infringement of copyright or patent rights arising, or alleged to have arisen, from WILSSA'S performance under this AGREEMENT. This obligation to indemnify, defend and hold harmless does not waive any defense, immunity or limitation of liability which may be available to the TOWN, its officers, agents, or employees under the Maine Tort Claims Act pursuant to 14 M.R.S. §8101 et. seq.

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2) In the event of the commencement of any action against the TOWN, or its respective officers, officials, agents, employees, or members of boards and committees which is within the scope of this indemnification, the TOWN will give notice thereof to WILSSA within fifteen business days after the TOWN is formally noticed in any such action, and, after consultation with the TOWN, WILSSA will have the right to select and furnish counsel for the defense of any such action, at no cost or expense to the TOWN.

3) The TOWN'S failure to give timely notice to WILSSA of the commencement of any such action does not relieve WILSSA of its obligations under this section unless such failure to give timely notice causes actual prejudice to WILSSA'S ability to defend any such claim. Except for settlements involving only the payment of money, no settlement which creates an obligation for the TOWN of any such action, or any claim therein, may be made by WILSSA or by counsel selected by WILSSA without the approval of the TOWN, which approval may not be unreasonably withheld.

4) The extent of WILSSA's indemnification and hold harmless is not limited by the requirements for liability insurance under this AGREEMENT.

B. Force Majeure

WILSSA is not liable for any loss or damage due to failure or delay in performance under this AGREEMENT resulting from any unusual or unavoidable cause beyond WILSSA's reasonable control such as, but not limited to: acts of God; acts or omissions of civil or military authority; fires; floods; epidemics; quarantine restrictions; unusually severe weather; strikes or other labor disputes; embargoes; wars; political strife; riots; sabotage; unusual delay in transportation.

11. Insurance

A. Coverage and Limits

Once construction begins on the structures and thereafter, WILSSA shall at its sole expense maintain insurance per the specifications and minimum limits set forth herein.

1) Commercial General Liability on an occurrence, as opposed to claims made, basis with general aggregate limit applicable per project and per location.

Each occurrence limit:.....\$1,000,000.00

General aggregate limit:.....\$2,000,000.00

Products/Completed operations aggregate limit:.....\$2,000,000.00

An additional insured provision is to apply to the TOWN and its respective officers, officials, agents, and employees on a primary, non-contributory basis.

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2) Automobile liability for owned, hired, and non-owned autos with combined single limit each accident of \$1,000,000. An additional insured, or designated insured, provision is to apply to the TOWN and its respective officers, officials, agents, and employees.

3) If there are any employees, workers' compensation insurance to comply with the requirements of Maine statute, plus employers' liability for:

Each Accident:.....\$100,000.00

Each Employee (disease):.....\$100,000.00

Policy Limit (disease):.....\$500,000.00

4) If required by Federal Statute, coverage to comply with the Longshore and Harbor Workers' Compensation Act (33 USC Sections 901-950) and/or Merchant Marine Act, 1920 (46 USC Section 688) commonly referenced as the "Jones Act".

5) All policies required by this AGREEMENT are to be provided by a company, or companies, admitted to conduct business in the State of Maine. All policies shall be so written that the Kittery Town Manager will be notified of cancellation at least ten (10) days prior to the effective date of such cancellation. A certificate of insurance from WILSSA's insurance carrier showing at least the coverage and limits of liability specified above and the inception and expiration dates shall be filed with the Town Manager at least seven (7) calendar days before operations are begun.

6) WILSSA agrees to require that any written Agreements between WILSSA and any of its service or material provider(s) will require the same provisions, coverages, and limits as in this Article 11. WILSSA shall obtain an endorsement to its Commercial General Liability policy to cover WILSSA'S obligations under this Article.

7) The TOWN will use its best effort to include WILSSA as an insured party in any agreement with the Abatement Contractor.

12. Amendment to AGREEMENT

This AGREEMENT contains all the terms and conditions between the parties, and no alteration, amendment, or addition to this agreement is valid unless in writing and signed by the WILSSA and a majority vote of the full TOWN COUNCIL.

13. Governing Law

This AGREEMENT is governed and interpreted by Maine law.

14. Liens

WILSSA shall keep the facilities free from any and all liens arising out of any work performed, materials furnished, or obligations incurred by WILSSA during the term of this AGREEMENT or any extension or renewal thereof.

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15. Waiver

No waiver by either party at any time, expressed or implied, of any breach of any provision of this AGREEMENT may be deemed a waiver of breach of any other provision of this AGREEMENT or a consent to any subsequent breach of the same or any other provision.

16. Dispute Resolution

Any dispute between the parties arising out of or relating to this AGREEMENT must be resolved in accordance with this Article. Any party may give written notice of a dispute arising out of or related to this Agreement to the other party in person or by certified mail, return receipt requested. The parties must attempt to resolve the matter through informal communication or negotiation for a period of thirty (30) days from the date of receipt of notice by the last party to receive notice. If the dispute has not been resolved within thirty (30) days, either party may serve written notice on the other party of a request for mediation. If the parties mutually agree to mediation, the mediation must be conducted in Maine by a mediator mutually agreeable to the parties, must not exceed one full day or two half days in length, and must be completed within forty five (45) days from the date of receipt of notice of a request for mediation by the last party to receive notice. In the event that the parties are unable to agree on a mediator within thirty (30) days, or to resolve the dispute through mediation within 45 days, the dispute may be submitted to arbitration with the written concurrence of both PARTIES in accordance with the procedures of the Maine Uniform Arbitration Act, 14 M.R.S. §5927 et seq. Nothing in this provision precludes either party from seeking all available legal or equitable remedies following mediation if it is held and arbitration is not agreed to by both PARTIES.

17. Termination by TOWN/ WILSSA for Cause

A. TOWN may terminate this AGREEMENT if WILSSA:

- 1) Fails to provide timely reports of activities to the TOWN as required by this AGREEMENT.
- 2) Is in substantial breach of this AGREEMENT.
- 3) This AGREEMENT may also be terminated by the TOWN in the event that WILSSA ceases to be an active, nonprofit corporation registered to do business under the laws of the State of Maine.

When any of the above conditions exist, the TOWN may, without prejudice to any other rights or remedies of the TOWN and after giving WILSSA thirty (30) days written notice to remedy above condition and the condition has not been remedied within 30 days of such notice, terminate this AGREEMENT and may:

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- 4) Take possession of all improvements made by WILSSA;
- 5) Maintain the work by whatever reasonable method TOWN may deem expedient using funds available through an Irrevocable Letter Of Credit or other comparable security as referred to in Article 7; or

B. WILSSA may terminate this AGREEMENT if the TOWN:

- 1) Is in substantial breach of this AGREEMENT.

When any of the above conditions exist, WILSSA may, without prejudice to any other remedies or WILSSA and after giving the TOWN thirty (30) days written notice to remedy the above condition and the condition has not been remedied within 30 days of such notice, terminate the AGREEMENT without penalty and may revoke the Letter of Credit or Other Comparable Security.

18. Voluntary Termination

If there is significant damage to the STRUCTURES from fire (including arson), flood, lightning, wind, wave or any act of God beyond the WILSSA'S control during the course of this AGREEMENT, WILSSA will estimate the cost of the damage. If those costs exceeded 75% of the cost of replacement of any one of the STRUCTURES so damaged or portion thereof that WILSSA is unable or unwilling to repair at their own expense, WILSSA reserves the right to terminate this contract without penalty.

If, in the event of damage to the structures as described above, the TOWN will inquire of WILSSA if WILSSA intends to exercise its right of voluntary termination. WILSSA will answer such an inquiry from the TOWN, when notified, within sixty 60 days and if planning to repair the damage at its own expense will provide a plan of work with timetable to complete the repairs. The TOWN will accept the plan of work and timetable under the same terms and conditions as are in this AGREEMENT.

If WILSSA chooses voluntarily to terminate this AGREEMENT for the reasons stated, any funds available in the Letter of Credit or other comparable security must be released to the TOWN to be used to help remedy the damage and maintain the property. Any funds remaining from the Letter of Credit or other comparable security after a remedy of the damages and maintenance of the property must be returned to WILSSA.

19. Maintenance of Structures:

At the completion of the repairs of the exterior of the STATION and continuing throughout the duration of this AGREEMENT, WILSSA must, at its own expense and at no cost or expense to the TOWN, maintain the STRUCTURES in a safe and orderly manner.

A 20-year Agreement describing maintenance and related conditions for the exterior of the STATION (Exhibit B, "Preservation Agreement") has been approved by the designee of the National Park Service and entered into by the TOWN as Grantor and the State of Maine as Grantee. That Agreement allows for TOWN to seek other parties to pay for the maintenance costs of the Agreement. WILSSA shall maintain the property in accordance with that Agreement on behalf of TOWN.

20. Acknowledgement: Deed Terms and Conditions

This AGREEMENT and the obligations of the parties hereto are subject to the terms and conditions set forth in the deed from the United States of America to the TOWN, dated February 27, 1973, and recorded in the York County Registry of Deeds at Book 1985 Page # 201, and the current Program of Utilization referenced in this AGREEMENT.

21. Assignment

WILSSA may not assign or otherwise transfer in any other way to any party or individual its rights, duties or obligations under this AGREEMENT, either in whole or in part without the prior written consent of the majority vote of the full Town Council unless specified in the CONCESSION AGREEMENT.

22. Notice

Any notice required or permitted to be given by either party hereto to the other is deemed to have been duly given when delivered personally or otherwise actually received after mailing by certified mail, return receipt requested, or by reputable overnight courier or by facsimile (with confirmation of receipt), addressed as follows:

To TOWN:
TOWN MANAGER
200 ROGERS ROAD
KITTERY, ME 03904

To WILSSA:
WOOD ISLAND LIFE SAVING STATION ASSOC.
P.O. BOX 11
KITTERY POINT, ME 03905

Other addresses may be established as the parties hereto may designate by written notice to the other party and delivered in accordance with the provisions of this article.

24. Rescission and Supersession

The Agreement between TOWN and WILLISA, dated October 18th, 2013, and all amendments thereto are superseded and rescinded as from the effective date of this AGREEMENT.

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25. Severability of Provisions

If any provision or any portion thereof contained in this AGREEMENT is held unconstitutional, invalid or unenforceable by a court of jurisdiction, the remainder of this AGREEMENT shall be deemed severable, shall not be affected, and shall remain in full force and effect.

IN WITNESS WHEREOF, the TOWN has authorized its Town Manager representing the TOWN to sign this AGREEMENT and WILSSA has approved the AGREEMENT and signed as of the date first noted above.

TOWN, by: Nancy Gilbert Puff

Nancy Gilbert Puff, Town Manager per Town Council vote 1/25/16
[Name] [Title] [Address] [TOWN, State, Zip Code]

WITNESS: Chris Delfabbato

WILSSA, by: James J. Reo

President, Po Box 11 Kitty Pt ME 03905
[Name] [Title] [Address] [TOWN, State, Zip Code]

WITNESS: Harvey Ester

EXHIBIT A. Quitclaim Deed

EXHIBIT B. Preservation Agreement

**WOOD ISLAND LIFE SAVING STATION REPAIR, and MAINTENANCE, ~~AND USE~~
AGREEMENT**

This REPAIR, and MAINTENANCE ~~and USE~~ AGREEMENT, hereinafter referred to as "AGREEMENT" is made and entered into this _____ day of _____, 2016 by and between the Town of Kittery, hereinafter referred to as the "TOWN", and the Wood Island Life Saving Station Association, a non-profit corporation based in Kittery Point, Maine, hereinafter called the "WILSSA", collectively called "PARTIES."

WITNESSETH:

Whereas, the TOWN owns certain land, a historic lifesaving STATION and appurtenances totaling 1.25 acres, obtained by the TOWN from the United States of America, known as Wood Island Life Saving Station, and deeded to the TOWN February 27, 1973, found in Book 1985, Page 201, of the York County Registry of Deeds hereinafter referred to as the "PREMISES". A copy of said quitclaim deed is attached and hereinafter referred to as Exhibit A; and

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Whereas, Condition No. 1 of said deed sets forth that "the property shall be used and maintained for the public purposes for which it was conveyed in perpetuity as set forth in the program of utilization and plan contained in the application submitted by the Grantee on the 25th day of October, 1972 and amended the 27th day of November 1972, which program and plan may be further amended from time to time at the request of either the Grantor or Grantee with the written recommendation and advice of the other party, and such amendments shall be added to and become a part of the original application;" and

Whereas, such program of utilization referenced above includes a statement that "the island would be used by boaters in the Piscataqua River as a place to stop for cookouts, picnics, etc. In addition, depending on the condition of present buildings it would also be maintained as a point of interest or historic site;" and

Whereas, Condition No. 3 of said deed provides that "The property will not be sold, leased, assigned or otherwise dispose of except to another ~~local~~ eligible Governmental agency..." "However, nothing in this provision shall preclude the Grantee from providing related recreational facilities and services compatible with the approved application, through concession agreements entered into with third parties, provided prior concurrence to such agreements is provided in writing by the Secretary of the Interior ~~or delegated representative~~"; and

Whereas, the TOWN and WILSSA use the term STRUCTURES to mean hereinafter the STATION (main building), shed, marine railway, pier, floats, moorings, seawalls, and wreck pole; and

Whereas, WILSSA desires to repair or construct the ~~structures~~ STRUCTURES, maintain them and use them as a Maritime Museum for the enjoyment of the public; and

Whereas, the TOWN proposes to allow the WILSSA to repair or construct the ~~structures~~ STRUCTURES, maintain them and use them as a Maritime Museum for the enjoyment of the public; and

Whereas, the TOWN and WILSSA contracts for Cleanup & Exterior Rehabilitation of the Wood Island Life Saving Station, Kittery, Maine, were executed on May 17, 2016, and incorporated herein by reference, as highlighted at Exhibit C (excerpts); and, planned work for pier, marine railway, and seawall project, drawings, specifications and permit documents, are prepared and also incorporated by reference herein (Exhibit D); and

~~**Whereas**, the TOWN acknowledges that only the TOWN can fund a hazardous materials abatement of the~~

structures and premises; the TOWN has secured \$200,000 in federal Brownfields funding; the abatement of all hazardous materials eligible for federal funding will be undertaken by TOWN with the concurrence of WILSSA in terms of planning, timing, budgeting, phasing, approach and vendor selection; and, every effort will be made by the PARTIES to create and publically advertise a scope of work as soon as practical and begin work in the spring of 2016; and

Whereas, the TOWN and WILSSA have finalized a concession agreement, as ~~agreed~~approved by the National Park Service, that specifies the conditions under which the restored STRUCTURES will be operated for the use and enjoyment of the public by WILSSA; and

Whereas, TOWN and the Maine State Historic Preservation Office have executed a 20 year Preservation Agreement as required by the \$200,000 National Maritime Heritage grant which has been approved by National Park Service that specifies the conditions under which the restored exterior of the STATION will be maintained; and

Whereas, the legislature of the State of Maine has passed into law an appropriation for \$200,000 in funding to match the National Maritime Heritage grant and to be used for the exterior repairs of the building as soon as the hazardous materials abatement has been completed; and

Whereas, WILSSA desires to seek additional private, foundation, corporate, state and federal funding or assistance to satisfy the financing of the repairs, construction, maintenance and operation of the STRUCTURES and the TOWN agrees to promptly review, make comments to, and make its best effort to support applications for funding or assistance by WILSSA, or apply for such funds or assistance itself on behalf of WILSSA ~~(such as an application for an innovative readiness training exercise from the Maine National Guard)~~, with the expressed condition that TOWN will not pay for any funding with the exception of the hazardous materials abatement funding; and

Whereas, the TOWN agrees to allow WILSSA to create a protocol for recognizing donors and volunteers to this project; and

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The TOWN does hereby allow WILSSA to repair or construct the STRUCTURES. The TOWN agrees not to award contracts or work to any other individual or entity, including itself, during the term of this AGREEMENT regarding the STRUCTURES, including, but not limited to, their repair, maintenance or use and the design, scheduling and execution of same without the written approval of WILSSA.

2. Improvements to Inure to the TOWN

Improvements to the STRUCTURES as undertaken, worked on and completed by WILSSA become the sole property of the TOWN.

3. Term

This AGREEMENT is effective immediately. This AGREEMENT will expire ~~either at upon issue of a~~ certificate of occupancy by the TOWN end of the term of the concession agreement or any extension thereof for the STATION for operation as a Museum, or 20 years after the effective date of the certificate of substantial completion of the exterior repairs ~~this AGREEMENT, if no such certificate of occupancy has been secured by WILSSA for the PREMISES in that time, whichever occurs later. The effective date of a Concession Agreement between the TOWN and WILSSA will be the date of issuance of the said~~ certificate of occupancy.

4. Payments, Fees and Royalties

There will be no fee or tax paid by WILSSA to the TOWN ~~or any other party~~ for this AGREEMENT or for any matters covered by this AGREEMENT. In addition, the TOWN will impose no other costs of any kind upon WILSSA or the PREMISES during the term of this AGREEMENT including, but not limited to, real estate property taxes or special assessments.

No funds raised by WILSSA will become the property of the TOWN except in accordance with Article 17 or 18 of this Agreement. WILSSA may create and retain any royalties or payments for the use of images and descriptions of the STATION ~~or its~~ WILSSA's activities related to repairing, maintaining or operating the STATION.

5. WILSSA's and TOWN's Records and Documents / Annual Report of Activities

With respect to all matters covered by this AGREEMENT, ~~WILSSA's~~ WILSSA's records and documents are subject at reasonable times to inspection, review or audit by the TOWN. With respect to all matters covered by this AGREEMENT, the ~~TOWN's~~ TOWN's records and documents are subject at reasonable times to inspection, review or audit by WILSSA. WILSSA must provide to the TOWN a regular report of activities on an annual basis due no later than the execution date of this AGREEMENT. This report must include milestones reached, approximate contract and volunteer hours expended, funds raised, funds expended, and forward looking estimates of the tasks ahead. TOWN may use this report as it wishes, including using it in whole or in part to satisfy any reporting requirements regarding Wood Island with the National Park Service.

6. Licenses and Permits

All necessary licenses and/or permits to undertake repairs to or construction of the STRUCTURES must be obtained by WILSSA from the appropriate TOWN, State, and Federal offices. Any licenses, leases, preservation agreements, (such as a submerged lands lease with the State of Maine for the pier) or permits, that require the owner of the property, rather than WILSSA, to be the applicant or signatory will be prepared by WILSSA in consultation with the TOWN and approved by the TOWN promptly, if appropriate. All fees for TOWN licenses, leases and/or permits and inspections will be waived for work authorized by this AGREEMENT. Consent for the issuance of any TOWN permits or permissions must not be unreasonably withheld.

7. Financial Security Package

~~Before undertaking any repairs or other improvements~~ In order to the STRUCTURES as permitted under the terms of this AGREEMENT and to insure ~~the satisfactory performance and completion of such any repairs and improvements or construction of the STRUCTURES greater than \$10,000, WILSSA must establish a financial security package in an Irrevocable Letter Of Credit~~ amount of not less than the projected total costs of the repairs or construction as reflected in the building permit(s) before undertaking any repairs or construction of the STRUCTURES. The financial security package may include an irrevocable letter of credit (LOC) with a Maine licensed bank or other comparable security or contract such as a federal grant agreement or a state appropriation with a relevant oversight agency in an

amount of not less than the projected total costs of the proposed repairs and improvements as reflected in the building permit(s) or in-kind contributions that have supporting documentation confirming the donation. The specific amount, financial institution, form and terms of the LOC or other comparable security or contract or in-kind donation to fund the portion of the project to be completed repairs or construction must be approved by the Kittery Town Manager for only the purpose of assuring that the financial security package meets the intent of this requirement. The Kittery Town Manager will consider in-kind contributions as a part of the financial security package.

8. Repair

WILSSA will select, arrange, design, schedule and supervise any and all aspects of the restoration of the STRUCTURES including all construction and finish work, as reflected in the Contract Documents for Cleanup & Exterior Rehabilitation of the Wood Island Life Saving Station, Kittery, Maine, executed on May 17, 2016, and incorporated herein by reference and highlighted in Exhibit C, "SOW Wood Island - Excerpts"; and, Exhibit D, "Drawings, specifications, and permit documents, for pier, marine railway and seawall projects"; and other such drawings, specifications and permit documents as may be created by WILSSA for other STRUCTURES in the future. TOWN will secure WILSSA's concurrence in terms of planning, timing, phasing, design, budgeting, approach, and vendor selection regarding the hazardous materials abatement.

9. Inspection of Structures

The WILSSA shall allow the Code Enforcement Officer, or designee, and the TOWN's public safety personnel, and/or the Secretary of the Interior's designated representative, National Park Service, and the State Historic Preservation Officer and their duly authorized representatives have the right to enter into and upon the STATION at a reasonable hour for the purpose of inspection of the STRUCTURES covered by this AGREEMENT upon reasonable advance notice to WILSSA. The TOWN's Code Enforcement Officer and the TOWN's public safety personnel including Fire and Police, have the right to enter into the structures at any time to perform inspections or undertake any activities within their respective functions and jurisdictions at any and all reasonable times to inspect any facility operated under this Agreement.

10. Other Terms and Conditions

A. Indemnity and Limitation of Liability

1) WILSSA hereby agrees to indemnify, defend and hold harmless the TOWN and its respective officers, officials, agents, employees, members of boards and committees, with respect to the equipment, work and materials that WILSSA or its subcontractors, employees, agents or representatives have agreed to perform and supply under this AGREEMENT from and against all expenses, losses and claims, demands, payments, suits, actions, liabilities, recoveries, and judgments of any nature and description, other than as a result of the sole negligence of the TOWN, including reasonable attorney's fees, resulting from claims arising out of or related to any act or omission of WILSSA, its agents, employees, contractors, representatives for service or materials provided, in the work and materials that WILSSA has agreed to perform and supply under this AGREEMENT, or by reason of any suit or claim for royalties, license fees, or infringement of copyright or patent rights arising, or alleged to have risen, from WILSSA's WILSSA's performance under this AGREEMENT. This obligation to indemnify, defend and hold harmless does not waive any defense, immunity or limitation of liability which may be available to the TOWN, its officers, agents, or employees under the Maine Tort Claims Act pursuant to 14 M.R.S. §8101 et. seq.

2) In the event of the commencement of any action against the TOWN, or its respective officers, officials, agents, employees, or members of boards and committees which is within the scope of this indemnification, the TOWN will give notice thereof to WILSSA within fifteen business days after the TOWN is formally noticed in any such action, and, after consultation with the TOWN, WILSSA will have

the right to select and furnish counsel for the defense of any such action, at no cost or expense to the TOWN.

3) The ~~TOWN'S~~ TOWN's failure to give timely notice to WILSSA of the commencement of any such action does not relieve WILSSA of its obligations under this section unless such failure to give timely notice causes actual prejudice to ~~WILSSA'S~~ WILSSA's ability to defend any such claim. Except for settlements involving only the payment of money, no settlement which creates an obligation for the TOWN of any such action, or any claim therein, may be made by WILSSA or by counsel selected by WILSSA without the approval of the TOWN, which approval may not be unreasonably withheld.

4) The extent of WILSSA's indemnification and hold harmless is not limited by the requirements for liability insurance under this AGREEMENT.

B. Force Majeure

WILSSA is not liable for any loss or damage due to failure or delay in performance under this AGREEMENT resulting from any unusual or unavoidable cause beyond WILSSA's reasonable control such as, but not limited to: acts of God; acts or omissions of civil or military authority; fires; floods; epidemics; quarantine restrictions; unusually severe weather; strikes or other labor disputes; embargoes; wars; political strife; riots; sabotage; unusual delay in transportation.

11. Insurance

A. Coverage and Limits

Once construction begins on the ~~structures~~ STRUCTURES and thereafter, WILSSA shall at its sole expense maintain insurance per the specifications and minimum limits set forth herein.

1) Commercial General Liability on an occurrence, as opposed to claims made, basis with general aggregate limit applicable per project and per location.

Each occurrence limit:.....\$1,000,000.00

General aggregate limit:.....\$2,000,000.00

Products/Completed operations aggregate limit:.....\$2,000,000.00

An additional insured provision is to apply to the TOWN and its respective officers, officials, agents, and employees on a primary, non-contributory basis.

2) Automobile liability for owned, hired, and non-owned autos with combined single limit each accident of \$1,000,000. An additional insured, or designated insured, provision is to apply to the TOWN and its respective officers, officials, agents, and employees.

3) If there are any employees, workers' compensation insurance to comply with the requirements of Maine statute, plus employers' liability for:

Each Accident:.....\$100,000.00

Each Employee (disease):.....\$100,000.00

Policy Limit (disease):.....\$500,000.00

4) If required by Federal Statute, coverage to comply with the Longshore and Harbor Workers' Compensation Act (33 USC Sections 901-950) and/or Merchant Marine Act, 1920 (46 USC Section 688) commonly referenced as the "Jones Act".

5) All policies required by this AGREEMENT are to be provided by a company, or companies, admitted to conduct business in the State of Maine. All policies shall be so written that the Kittery Town Manager will be notified of cancellation at least ten (10) days prior to the effective date of such cancellation. A

certificate of insurance from WILSSA's insurance carrier showing at least the coverage and limits of liability specified above and the inception and expiration dates shall be filed with the Town Manager at least seven (7) calendar days before operations are begun.

6) WILSSA agrees to require that any written Agreements between WILSSA and any of its service or material provider(s) will require the same provisions, coverages, and limits as in this Article 11. WILSSA shall obtain an endorsement to its Commercial General Liability policy to cover ~~WILSSA'S~~WILSSA's obligations under this Article.

7) The TOWN will use its best effort to include WILSSA as an insured party in any agreement with the Abatement Contractor.

12. Amendment to AGREEMENT

This AGREEMENT contains all the terms and conditions between the parties, and no alteration, amendment, or addition to this agreement is valid unless in writing and signed by the WILSSA and a majority vote of the full ~~TOWN COUNCIL~~Town Council.

13. Governing Law

This AGREEMENT is governed and interpreted by Maine law.

14. Liens

WILSSA shall keep the ~~facilities~~PREMISES free from any and all liens arising out of any work performed, materials furnished, or obligations incurred by WILSSA during the term of this AGREEMENT or any extension or renewal thereof.

15. Waiver

Failure of either party to complain of any act or omission on the part of the other party, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of said party's rights hereunder. No waiver by either party at any time, expressed or implied, of any breach of any provision of this AGREEMENT may be deemed a waiver of breach of any other provision of this AGREEMENT or a consent to any subsequent breach of the same or any other provision. If any action by either party requires the consent and approval of the other party, the other party's consent to or approval of such action on any one occasion may not be deemed to be a consent to or approval of said action on any subsequent occasion. Any and all rights and remedies which either party may have under this Agreement, upon any breach, are distinct, separate and cumulative and may not be deemed inconsistent with each other; and no one of them, whether exercised by said party or not, may be deemed to be an exclusion of any other.

16. Dispute Resolution

Any dispute between the parties arising out of or relating to this AGREEMENT must be resolved in accordance with this Article. Any party may give written notice of a dispute arising out of or related to this Agreement to the other party in person or by certified mail, return receipt requested. The parties must attempt to resolve the matter through informal communication or negotiation for a period of thirty (30) days from the date of receipt of notice by the last party to receive notice. If the dispute has not been resolved within thirty (30) days, either party may serve written notice on the other party of a request for mediation.

If the parties mutually agree to mediation, the mediation must be conducted in Maine by a mediator mutually agreeable to the parties, must not exceed one full day or two half days in length, and must be completed within ~~fourty~~forty-five (45) days from the date of receipt of notice of a request for mediation by the last party to receive notice. In the event that the parties are unable to agree on a mediator within thirty (30) days, or to resolve the dispute through mediation within 45 days, the dispute may be submitted to

arbitration with the written concurrence of both PARTIES in accordance with the procedures of the Maine Uniform Arbitration Act, 14 M.R.S. §5927 et seq. Nothing in this provision precludes either party from seeking all available legal or equitable remedies following mediation if it is held and arbitration is not agreed to by both PARTIES.

17. Termination by TOWN/ WILSSA for Cause

A. TOWN may terminate this AGREEMENT if WILSSA:

- 1) Fails to provide timely reports of activities to the TOWN as required by this AGREEMENT.
 - 2) Is in substantial breach of this AGREEMENT.
 - 3) This AGREEMENT may also be terminated by the TOWN in the event that WILSSA ceases to be an active, nonprofit corporation registered to do business under the laws of the State of Maine.
- When any of the above conditions exist, the TOWN may, without prejudice to any other rights or remedies of the TOWN and after giving WILSSA thirty (30) days written notice to remedy above condition and the condition has not been remedied within 30 days of such notice, terminate this AGREEMENT and may:
- 4) Take possession of all improvements made by WILSSA;
 - 5) Maintain the work by whatever reasonable method TOWN may deem expedient using funds available through an Irrevocable Letter Of Credit or other comparable security as referred to in Article 7; or

B. WILSSA may terminate this AGREEMENT if the TOWN:

- 1) Is in substantial breach of this AGREEMENT.
- When any of the above conditions exist, WILSSA may, without prejudice to any other remedies or WILSSA and after giving the TOWN thirty (30) days written notice to remedy the above condition and the condition has not been remedied within 30 days of such notice, terminate the AGREEMENT without penalty and may revoke the Letter of Credit or ~~Other~~ Comparable ~~Security~~.

18. Voluntary Termination

If there is significant damage to the STRUCTURES from fire (including arson), flood, lightning, wind, wave or any act of God beyond the ~~WILSSA'S~~ WILSSA's control during the course of this AGREEMENT, WILSSA will estimate the cost of the damage. If those costs exceeded 75% of the cost of replacement of any one of the STRUCTURES so damaged or portion thereof that WILSSA is unable or unwilling to repair at their own expense, WILSSA reserves the right to terminate this contract without penalty.

If, in the event of damage to the ~~structures~~ STRUCTURES as described above, the TOWN will inquire of WILSSA if WILSSA intends to exercise its right of voluntary termination. WILSSA will answer such an inquiry from the TOWN, when notified, within sixty 60 days and if planning to repair the damage at its own expense will provide a plan of work with timetable to complete the repairs. The TOWN will accept the plan of work and timetable under the same terms and conditions as are in this AGREEMENT and WILSSA shall then implement the plan.

If WILSSA chooses voluntarily to terminate this AGREEMENT for the reasons stated, any funds available in the Letter of Credit or other comparable security must be released to the TOWN to be used to help remedy the damage and maintain the property. Any funds remaining from the Letter of Credit or other comparable security after a remedy of the damages and maintenance of the property must be returned to WILSSA.

19. Maintenance of Structures:

At the completion of the repairs of the exterior of the STATION and continuing throughout the duration of this AGREEMENT, WILSSA must, at its own expense and at no cost or expense to the TOWN, maintain the STRUCTURES in a safe and orderly manner.

A 20-year Agreement describing maintenance and related conditions for the exterior of the STATION (Exhibit B, "Preservation Agreement") has been approved by the designee of the National Park Service and entered into by the TOWN as Grantor and the State of Maine as Grantee. That Agreement allows for TOWN to seek other parties to pay for the maintenance costs of the Agreement. WILSSA shall maintain the property in accordance with that Agreement on behalf of TOWN.

20. Acknowledgement: Deed Terms and Conditions

This AGREEMENT and the obligations of the parties hereto are subject to the terms and conditions set forth in the deed from the United States of America to the TOWN, dated February 27, 1973, and recorded in the York County Registry of Deeds at Book 1985 Page # 201, and the current Program of Utilization referenced in this AGREEMENT.

Violations of the said terms and conditions may be grounds for reversion to the United States of America, at its discretion and termination of this Agreement. WILSSA-owned personal and real property improvements associated with the real property, may be subject to seizure, without compensation, by the USA.

21. Assignment

WILSSA may not assign or otherwise transfer in any other way to any party or individual its rights, duties or obligations under this AGREEMENT, either in whole or in part without the prior written consent of the majority vote of the full Town Council ~~unless specified in the CONCESSION AGREEMENT.~~

22. Notice

Any notice required or permitted to be given by either party hereto to the other is deemed to have been duly given when delivered personally or otherwise actually received after mailing by certified mail, return receipt requested, or by reputable overnight courier or by facsimile (with confirmation of receipt), addressed as follows:

To TOWN:	To WILSSA:
TOWN MANAGER	WOOD ISLAND LIFE SAVING STATION ASSOC-
200 ROGERS ROAD-	P.O. -BOX 11
KITTERY, ME 03904-	KITTERY POINT, ME 03905

Any notice related to the requirements of Section 106 of National Historic Preservation Act of 1966 (NHPA) (16 USC §470f) or 36 CFR Part 800, "Protection of Historic Properties", must also be given to the State Historic Program Office: Maine Historic Preservation Commission, 55 Capitol Street, 65 State House Station, Augusta, Maine 04333

Other addresses may be established as the parties hereto may designate by written notice to the other party and delivered in accordance with the provisions of this article.

23. Rescission and Supersession

~~The~~The "Repair, Maintenance and Use" Agreement between TOWN and ~~WILSSA~~WILSSA, dated ~~October 18th, 2013~~ January 25th, 2016, and all amendments thereto are superseded and rescinded as from the effective date of this AGREEMENT.-

24. Severability of Provisions

If any provision or any portion thereof contained in this AGREEMENT is held unconstitutional, invalid or unenforceable by a court of jurisdiction, the remainder of this AGREEMENT shall be deemed severable, shall not be affected, and shall remain in full force and effect.

343 **IN WITNESS WHEREOF**, the TOWN has authorized its Town Manager representing the TOWN to sign
344 this AGREEMENT and WILSSA has approved the AGREEMENT and signed as of the date first noted
345 above.

346 **WITNESS:** **KITTERY, MAINE (OWNER)**

347 _____ **BY:** _____

348 _____

349 _____

350 *[Name][Title][Address] [Town, State, Zip Code]*

351 **WITNESS:** **WOOD ISLAND LIFE STATION ASSOCIATION**

352 | _____ **BY:** _____

353 | _____

354 | _____

355 | _____

356 *[Name][Title][Address] [Town, State, Zip Code]*

357

358 **EXHIBIT A. Quitclaim Deed**

359 **EXHIBIT B. Preservation Agreement**

360 **EXHIBIT C. SOW - Wood Island - Excerpts**

361 **EXHIBIT D. Wood Island MDEP-USACE Permits - Excerpts**

WOOD ISLAND LIFE SAVING STATION REPAIR and MAINTENANCE AGREEMENT

This REPAIR and MAINTENANCE AGREEMENT, hereinafter referred to as "AGREEMENT" is made and entered into this _____ day of _____, 2016 by and between the Town of Kittery, hereinafter referred to as the "TOWN", and the Wood Island Life Saving Station Association, a non-profit corporation based in Kittery Point, Maine, hereinafter called the "WILSSA", collectively called "PARTIES."

WITNESSETH:

Whereas, the TOWN owns certain land, a historic lifesaving STATION and appurtenances totaling 1.25 acres, obtained by the TOWN from the United States of America, known as Wood Island Life Saving Station, and deeded to the TOWN February 27, 1973, found in Book 1985, Page 201, of the York County Registry of Deeds hereinafter referred to as the "PREMISES". A copy of said quitclaim deed is attached and hereinafter referred to as Exhibit A; and

Whereas, Condition No. 1 of said deed sets forth that "the property shall be used and maintained for the public purposes for which it was conveyed in perpetuity as set forth in the program of utilization and plan contained in the application submitted by the Grantee on the 25th day of October, 1972 and amended the 27th day of November 1972, which program and plan may be further amended from time to time at the request of either the Grantor or Grantee with the written recommendation and advice of the other party, and such amendments shall be added to and become a part of the original application;" and

Whereas, such program of utilization referenced above includes a statement that "the island would be used by boaters in the Piscataqua River as a place to stop for cookouts, picnics, etc. In addition, depending on the condition of present buildings it would also be maintained as a point of interest or historic site;" and

Whereas, Condition No. 3 of said deed provides that "The property will not be sold, leased, assigned or otherwise dispose of except to another local Governmental agency..." "However, nothing in this provision shall preclude the Grantee from providing related recreational facilities and services compatible with the approved application, through concession agreements entered into with third parties, provided prior concurrence to such agreements is provided in writing by the Secretary of the Interior "; and

Whereas, the TOWN and WILSSA use the term STRUCTURES to mean hereinafter the STATION (main building), shed, marine railway, pier, floats, moorings, seawalls, and wreck pole; and

Whereas, WILSSA desires to repair or construct the STRUCTURES, maintain them and use them as a Maritime Museum for the enjoyment of the public; and

Whereas, the TOWN proposes to allow the WILSSA to repair or construct the STRUCTURES, maintain them and use them as a Maritime Museum for the enjoyment of the public; and

Whereas, the TOWN and WILSSA contracts for Cleanup & Exterior Rehabilitation of the Wood Island Life Saving Station, Kittery, Maine, were executed on May 17, 2016, and incorporated herein by reference, as highlighted at Exhibit C (excerpts); and, planned work for pier, marine railway, and seawall project, drawings, specifications and permit documents, are prepared and also incorporated by reference herein (Exhibit D); and

Whereas, the TOWN and WILSSA have finalized a concession agreement, as approved by the National Park Service, that specifies the conditions under which the restored STRUCTURES will be operated for the use and enjoyment of the public by WILSSA; and

Whereas, TOWN and the Maine State Historic Preservation Office have executed a 20 year Preservation Agreement as required by the \$200,000 National Maritime Heritage grant which has been approved by National Park Service that specifies the conditions under which the restored exterior of the STATION will be maintained; and

44 **Whereas**, the legislature of the State of Maine has passed into law an appropriation for \$200,000 in
45 funding to match the National Maritime Heritage grant and to be used for the exterior repairs of the
46 building as soon as the hazardous materials abatement has been completed; and

47 **Whereas**, WILSSA desires to seek additional private, foundation, corporate, state and federal funding or
48 assistance to satisfy the financing of the repairs, construction, maintenance and operation of the
49 STRUCTURES and the TOWN agrees to promptly review, make comments to, and make its best effort to
50 support applications for funding or assistance by WILSSA, or apply for such funds or assistance itself on
51 behalf of WILSSA , with the expressed condition that TOWN will not pay for any funding with the
52 exception of the hazardous materials abatement funding; and

53 **Whereas**, the TOWN agrees to allow WILSSA to create a protocol for recognizing donors and volunteers
54 to this project; and

55 **Whereas**, WILSSA and the TOWN agree that a nomination for National Register of Historic Places is
56 appropriate and fitting for the historic STATION that is eligible for such listing and the TOWN agrees not
57 to object to such a nomination and to support it; and

58 **Whereas**, nothing in this agreement may restrict the public's access to Wood Island itself for recreational
59 purposes year round, with the exception of areas inside designated construction sites or the maritime
60 museum.

61 **NOW, THEREFORE**, for the reasons set forth above, and in consideration of the mutual covenants and
62 agreements as hereinafter set forth, WILSSA agrees to undertake the repair, construction and maintenance
63 of the STRUCTURES and the TOWN agrees to allow WILSSA to repair or construct and maintain the
64 STRUCTURES subject to all the terms and conditions of this AGREEMENT.

65 **1. Exclusive Authority to Repair and Construct Structures**

66 The TOWN does hereby allow WILSSA to repair or construct the STRUCTURES. The TOWN agrees
67 not to award contracts or work to any other individual or entity, including itself, during the term of this
68 AGREEMENT regarding the STRUCTURES, including, but not limited to, their repair, maintenance or
69 use and the design, scheduling and execution of same without the written approval of WILSSA.

70 **2. Improvements to Inure to the TOWN**

71 Improvements to the STRUCTURES as undertaken, worked on and completed by WILSSA become the
72 sole property of the TOWN.

73 **3. Term**

74 This AGREEMENT is effective immediately. This AGREEMENT will expire upon issue of a certificate
75 of occupancy by the TOWN for the STATION for operation as a Museum, or 20 years after the effective
76 date of this AGREEMENT, if no such certificate of occupancy has been secured by WILSSA, whichever
77 occurs later. The effective date of a Concession Agreement between the TOWN and WILSSA will be the
78 date of issuance of the said certificate of occupancy.

79 **4. Payments, Fees and Royalties**

80 There will be no fee or tax paid by WILSSA to the TOWN for this AGREEMENT or for any matters
81 covered by this AGREEMENT. In addition, the TOWN will impose no other costs of any kind upon
82 WILSSA or the PREMISES during the term of this AGREEMENT including, but not limited to, real estate
83 property taxes or special assessments.

84 No funds raised by WILSSA will become the property of the TOWN except in accordance with Article 17
85 or 18 of this Agreement. WILSSA may create and retain any royalties or payments for the use of images
86 and descriptions of the STATION or its activities related to repairing, maintaining or operating the
87 STATION.

5. WILSSA's and TOWN's Records and Documents / Annual Report of Activities

With respect to all matters covered by this AGREEMENT, WILSSA's records and documents are subject at reasonable times to inspection, review or audit by the TOWN. With respect to all matters covered by this AGREEMENT, the TOWN's records and documents are subject at reasonable times to inspection, review or audit by WILSSA. WILSSA must provide to the TOWN a regular report of activities on an annual basis due no later than the execution date of this AGREEMENT. This report must include milestones reached, approximate contract and volunteer hours expended, funds raised, funds expended, and forward looking estimates of the tasks ahead. TOWN may use this report as it wishes, including using it in whole or in part to satisfy any reporting requirements regarding Wood Island with the National Park Service.

6. Licenses and Permits

All necessary licenses and/or permits to undertake repairs to or construction of the STRUCTURES must be obtained by WILSSA from the appropriate TOWN, State, and Federal offices. Any licenses, leases, preservation agreements, or permits, that require the owner of the property, rather than WILSSA, to be the applicant or signatory will be prepared by WILSSA in consultation with the TOWN and approved by the TOWN promptly. All fees for TOWN licenses, leases and/or permits and inspections will be waived for work authorized by this AGREEMENT. Consent for the issuance of any TOWN permits or permissions must not be unreasonably withheld.

7. Financial Security Package

In order to ensure the satisfactory performance and completion of any repairs or construction of the STRUCTURES greater than \$10,000, WILSSA must establish a financial security package in an amount of not less than the projected total costs of the repairs or construction as reflected in the building permit(s) before undertaking any repairs or construction of the STRUCTURES. The financial security package may include an irrevocable letter of credit (LOC) with a Maine licensed bank or other comparable security or contract such as a federal grant agreement or a state appropriation with a relevant oversight agency or in-kind contributions that have supporting documentation confirming the donation. The specific amount, financial institution, form and terms of the LOC or other comparable security or contract or in-kind donation to fund the repairs or construction must be approved by the Kittery Town Manager for only the purpose of assuring that the financial security package meets the intent of this requirement.

8. Repair

WILSSA will select, arrange, design, schedule and supervise any and all aspects of the restoration of the STRUCTURES including all construction and finish work as reflected in the Contract Documents for Cleanup & Exterior Rehabilitation of the Wood Island Life Saving Station, Kittery, Maine, executed on May 17, 2016, and incorporated herein by reference and highlighted in Exhibit C, "SOW Wood Island - Excerpts"; and, Exhibit D, "Drawings, specifications, and permit documents, for pier, marine railway and seawall projects"; and other such drawings, specifications and permit documents as may be created by WILSSA for other STRUCTURES in the future. TOWN will secure WILSSA's concurrence in terms of planning, timing, phasing, design, budgeting, approach, and vendor selection regarding the hazardous materials abatement.

9. Inspection of Structures

WILSSA shall allow the Code Enforcement Officer, or designee, and the TOWN's public safety personnel, and/or the Secretary of the Interior's designated representative, National Park Service, and the State Historic Preservation Officer or duly authorized representatives at any and all reasonable times to inspect any facility operated under this Agreement.

10. Other Terms and Conditions

A. Indemnity and Limitation of Liability

1) WILSSA hereby agrees to indemnify, defend and hold harmless the TOWN and its respective officers, officials, agents, employees, members of boards and committees, with respect to the equipment, work and materials that WILSSA or its subcontractors, employees, agents or representatives have agreed to perform and supply under this AGREEMENT from and against all expenses, losses and claims, demands, payments, suits, actions, liabilities, recoveries, and judgments of any nature and description, other than as a result of the sole negligence of the TOWN, including reasonable attorney's fees, resulting from claims arising out of or related to any act or omission of WILSSA, its agents, employees, contractors, representatives for service or materials provided, in the work and materials that WILSSA has agreed to perform and supply under this AGREEMENT, or by reason of any suit or claim for royalties, license fees, or infringement of copyright or patent rights arising, or alleged to have arisen, from WILSSA's performance under this AGREEMENT. This obligation to indemnify, defend and hold harmless does not waive any defense, immunity or limitation of liability which may be available to the TOWN, its officers, agents, or employees under the Maine Tort Claims Act pursuant to 14 M.R.S. §8101 et. seq.

2) In the event of the commencement of any action against the TOWN, or its respective officers, officials, agents, employees, or members of boards and committees which is within the scope of this indemnification, the TOWN will give notice thereof to WILSSA within fifteen business days after the TOWN is formally noticed in any such action, and, after consultation with the TOWN, WILSSA will have the right to select and furnish counsel for the defense of any such action, at no cost or expense to the TOWN.

3) The TOWN's failure to give timely notice to WILSSA of the commencement of any such action does not relieve WILSSA of its obligations under this section unless such failure to give timely notice causes actual prejudice to WILSSA's ability to defend any such claim. Except for settlements involving only the payment of money, no settlement which creates an obligation for the TOWN of any such action, or any claim therein, may be made by WILSSA or by counsel selected by WILSSA without the approval of the TOWN, which approval may not be unreasonably withheld.

4) The extent of WILSSA's indemnification and hold harmless is not limited by the requirements for liability insurance under this AGREEMENT.

B. Force Majeure

WILSSA is not liable for any loss or damage due to failure or delay in performance under this AGREEMENT resulting from any unusual or unavoidable cause beyond WILSSA's reasonable control such as, but not limited to: acts of God; acts or omissions of civil or military authority; fires; floods; epidemics; quarantine restrictions; unusually severe weather; strikes or other labor disputes; embargoes; wars; political strife; riots; sabotage; unusual delay in transportation.

11. Insurance

A. Coverage and Limits

Once construction begins on the STRUCTURES and thereafter, WILSSA shall at its sole expense maintain insurance per the specifications and minimum limits set forth herein.

1) Commercial General Liability on an occurrence, as opposed to claims made, basis with general aggregate limit applicable per project and per location.

Each occurrence limit:.....\$1,000,000.00

General aggregate limit:.....\$2,000,000.00

Products/Completed operations aggregate limit:.....\$2,000,000.00

An additional insured provision is to apply to the TOWN and its respective officers, officials, agents, and employees on a primary, non-contributory basis.

2) Automobile liability for owned, hired, and non-owned autos with combined single limit each accident of \$1,000,000. An additional insured, or designated insured, provision is to apply to the TOWN and its respective officers, officials, agents, and employees.

3) If there are any employees, workers' compensation insurance to comply with the requirements of Maine statute, plus employers' liability for:

Each Accident:.....\$100,000.00

Each Employee (disease):.....\$100,000.00

Policy Limit (disease):.....\$500,000.00

4) If required by Federal Statute, coverage to comply with the Longshore and Harbor Workers' Compensation Act (33 USC Sections 901-950) and/or Merchant Marine Act, 1920 (46 USC Section 688) commonly referenced as the "Jones Act".

5) All policies required by this AGREEMENT are to be provided by a company, or companies, admitted to conduct business in the State of Maine. All policies shall be so written that the Kittery Town Manager will be notified of cancellation at least ten (10) days prior to the effective date of such cancellation. A certificate of insurance from WILSSA's insurance carrier showing at least the coverage and limits of liability specified above and the inception and expiration dates shall be filed with the Town Manager at least seven (7) calendar days before operations are begun.

6) WILSSA agrees to require that any written Agreements between WILSSA and any of its service or material provider(s) will require the same provisions, coverages, and limits as in this Article 11. WILSSA shall obtain an endorsement to its Commercial General Liability policy to cover WILSSA's obligations under this Article.

7) The TOWN will use its best effort to include WILSSA as an insured party in any agreement with the Abatement Contractor.

12. Amendment to AGREEMENT

This AGREEMENT contains all the terms and conditions between the parties, and no alteration, amendment, or addition to this agreement is valid unless in writing and signed by the WILSSA and a majority vote of the full Town Council.

13. Governing Law

This AGREEMENT is governed and interpreted by Maine law.

14. Liens

WILSSA shall keep the PREMISES free from any and all liens arising out of any work performed, materials furnished, or obligations incurred by WILSSA during the term of this AGREEMENT or any extension or renewal thereof.

15. Waiver

Failure of either party to complain of any act or omission on the part of the other party, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of said party's rights hereunder. No waiver by either party at any time, expressed or implied, of any breach of any provision of this AGREEMENT may be deemed a waiver of breach of any other provision of this AGREEMENT or a consent to any subsequent breach of the same or any other provision.

If any action by either party requires the consent and approval of the other party, the other party's consent to or approval of such action on any one occasion may not be deemed to be a consent to or approval of said action on any subsequent occasion. Any and all rights and remedies which either party may have under this Agreement, upon any breach, are distinct, separate and cumulative and may not be deemed inconsistent with each other; and no one of them, whether exercised by said party or not, may be deemed to be an exclusion of any other.

16. Dispute Resolution

Any dispute between the parties arising out of or relating to this AGREEMENT must be resolved in accordance with this Article. Any party may give written notice of a dispute arising out of or related to this Agreement to the other party in person or by certified mail, return receipt requested. The parties must attempt to resolve the matter through informal communication or negotiation for a period of thirty (30) days from the date of receipt of notice by the last party to receive notice. If the dispute has not been resolved within thirty (30) days, either party may serve written notice on the other party of a request for mediation.

If the parties mutually agree to mediation, the mediation must be conducted in Maine by a mediator mutually agreeable to the parties, must not exceed one full day or two half days in length, and must be completed within forty-five (45) days from the date of receipt of notice of a request for mediation by the last party to receive notice. In the event that the parties are unable to agree on a mediator within thirty (30) days, or to resolve the dispute through mediation within 45 days, the dispute may be submitted to arbitration with the written concurrence of both PARTIES in accordance with the procedures of the Maine Uniform Arbitration Act, 14 M.R.S. §5927 et seq. Nothing in this provision precludes either party from seeking all available legal or equitable remedies following mediation if it is held and arbitration is not agreed to by both PARTIES.

17. Termination by TOWN/ WILSSA for Cause

A. TOWN may terminate this AGREEMENT if WILSSA:

- 1) Fails to provide timely reports of activities to the TOWN as required by this AGREEMENT.
- 2) Is in substantial breach of this AGREEMENT.
- 3) This AGREEMENT may also be terminated by the TOWN in the event that WILSSA ceases to be an active, nonprofit corporation registered to do business under the laws of the State of Maine.

When any of the above conditions exist, the TOWN may, without prejudice to any other rights or remedies of the TOWN and after giving WILSSA thirty (30) days written notice to remedy above condition and the condition has not been remedied within 30 days of such notice, terminate this AGREEMENT and may:

- 4) Take possession of all improvements made by WILSSA;
- 5) Maintain the work by whatever reasonable method TOWN may deem expedient using funds available through an Irrevocable Letter Of Credit or other comparable security as referred to in Article 7; or

B. WILSSA may terminate this AGREEMENT if the TOWN:

- 1) Is in substantial breach of this AGREEMENT.

When any of the above conditions exist, WILSSA may, without prejudice to any other remedies or WILSSA and after giving the TOWN thirty (30) days written notice to remedy the above condition and the condition has not been remedied within 30 days of such notice, terminate the AGREEMENT without penalty and may revoke the Letter of Credit or other comparable security.

18. Voluntary Termination

If there is significant damage to the STRUCTURES from fire (including arson), flood, lightning, wind, wave or any act of God beyond the WILSSA's control during the course of this AGREEMENT, WILSSA will estimate the cost of the damage. If those costs exceeded 75% of the cost of replacement of any one of the STRUCTURES so damaged or portion thereof that WILSSA is unable or unwilling to repair at their own expense, WILSSA reserves the right to terminate this contract without penalty.

If, in the event of damage to the STRUCTURES as described above, the TOWN will inquire of WILSSA if WILSSA intends to exercise its right of voluntary termination. WILSSA will answer such an inquiry from the TOWN, when notified, within sixty 60 days and if planning to repair the damage at its own expense will provide a plan of work with timetable to complete the repairs. The TOWN will accept the plan of work and timetable under the same terms and conditions as are in this AGREEMENT and WILSSA shall then implement the plan.

If WILSSA chooses voluntarily to terminate this AGREEMENT for the reasons stated, any funds available in the Letter of Credit or other comparable security must be released to the TOWN to be used to help remedy the damage and maintain the property. Any funds remaining from the Letter of Credit or other comparable security after a remedy of the damages and maintenance of the property must be returned to WILSSA.

19. Maintenance of Structures:

At the completion of the repairs of the exterior of the STATION and continuing throughout the duration of this AGREEMENT, WILSSA must, at its own expense and at no cost or expense to the TOWN, maintain the STRUCTURES in a safe and orderly manner.

A 20-year Agreement describing maintenance and related conditions for the exterior of the STATION (Exhibit B, "Preservation Agreement") has been approved by the designee of the National Park Service and entered into by the TOWN as Grantor and the State of Maine as Grantee. That Agreement allows for TOWN to seek other parties to pay for the maintenance costs of the Agreement. WILSSA shall maintain the property in accordance with that Agreement on behalf of TOWN.

20. Acknowledgement: Deed Terms and Conditions

This AGREEMENT and the obligations of the parties hereto are subject to the terms and conditions set forth in the deed from the United States of America to the TOWN, dated February 27, 1973, and recorded in the York County Registry of Deeds at Book 1985 Page # 201, and the current Program of Utilization referenced in this AGREEMENT.

Violations of the said terms and conditions may be grounds for reversion to the United States of America, at its discretion and termination of this Agreement. WILSSA-owned personal and real property improvements associated with the real property, may be subject to seizure, without compensation, by the USA.

21. Assignment

WILSSA may not assign or otherwise transfer in any other way to any party or individual its rights, duties or obligations under this AGREEMENT, either in whole or in part without the prior written consent of the majority vote of the full Town Council.

22. Notice

Any notice required or permitted to be given by either party hereto to the other is deemed to have been duly given when delivered personally or otherwise actually received after mailing by certified mail, return receipt requested, or by reputable overnight courier or by facsimile (with confirmation of receipt), addressed as follows:

To TOWN:	To WILSSA:
TOWN MANAGER	WOOD ISLAND LIFE SAVING STATION ASSOC
200 ROGERS ROAD	P.O. BOX 11
KITTERY, ME 03904	KITTERY POINT, ME 03905

Any notice related to the requirements of Section 106 of National Historic Preservation Act of 1966 (NHPA) (16 USC §470f) or 36 CFR Part 800, "Protection of Historic Properties", must also be given to the State Historic Program Office: Maine Historic Preservation Commission, 55 Capitol Street, 65 State House Station, Augusta, Maine 04333

Other addresses may be established as the parties hereto may designate by written notice to the other party and delivered in accordance with the provisions of this article.

23. Rescission and Supersession

The "Repair, Maintenance and Use" Agreement between TOWN and WILSSA, dated January 25th, 2016, and all amendments thereto are superseded and rescinded as from the effective date of this AGREEMENT.

24. Severability of Provisions

If any provision or any portion thereof contained in this AGREEMENT is held unconstitutional, invalid or unenforceable by a court of jurisdiction, the remainder of this AGREEMENT shall be deemed severable, shall not be affected, and shall remain in full force and effect.

IN WITNESS WHEREOF, the TOWN has authorized its Town Manager representing the TOWN to sign this AGREEMENT and WILSSA has approved the AGREEMENT and signed as of the date first noted above.

WITNESS:

KITTERY, MAINE (OWNER)

BY: _____

[Name][Title][Address] [Town, State, Zip Code]

WITNESS:

WOOD ISLAND LIFE STATION ASSOCIATION

BY: _____

[Name][Title][Address] [Town, State, Zip Code]

EXHIBIT A. Quitclaim Deed

EXHIBIT B. Preservation Agreement

EXHIBIT C. Scope of Work – Excerpts

EXHIBIT D. Wood_Island_MDEP-USACE_Permits - Excerpts

RTC - ENCLOSURE 4 - NPS PM RESPONSE

From: **LaForest, Elyse** <elyse_laforest@nps.gov>
Date: Fri, Jun 24, 2016 at 1:21 PM
Subject: Re: Wood Island Agreements - Final Drafts
To: Gary Beers <gbeers.ktc@gmail.com>

I have reviewed the attached agreements. Both are acceptable to the National Park Service should the Town of Kittery and WILSSA approve and sign them.

If (when) these documents are accepted by both parties, please furnish me with signed copies.

Thank you for working through this process. I agree, these documents are far clearer (for all parties) than the ones originally presented. I appreciate the Town's and WILSSA efforts not only on this paperwork, but especially on the restoration of the Lifesaving Station.

Sincerely,

Elyse LaForest

COPY QUITCLAIM DEED

The UNITED STATES OF AMERICA, acting by and through the Regional Director, Northeast Region, Bureau of Outdoor Recreation, with offices at 1421 Cherry Street, Philadelphia, Pennsylvania, pursuant to authority delegated by the Secretary of the Interior, and as authorized by the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, and particularly as amended by Public Law 91-485 (84 Stat. 1084), and regulations and orders promulgated thereunder (hereinafter referred to as Grantor), for and in consideration of the use and maintenance of the property herein conveyed for public park and public recreation purposes in perpetuity by the Town of Kittery, Maine (hereinafter referred to as Grantee), does hereby remise, release, and quitclaim to Grantee, its successors and assigns, subject to the reservations, exceptions, restrictions, conditions and covenants hereinafter set forth, all right, title and interest of the Grantor in and to all that tract or parcel of land known as Wood Island, situated near the mouth of the Piscataqua River, County of York, State of Maine.

The property herein conveyed contains 1.25 acres, more or less, and was formerly known as the Old Portsmouth Harbor Lifeboat Station, U-Me-449A, under the administrative jurisdiction of the Department of Transportation, an agency of the United States Government.

TOGETHER WITH the appurtenances, the buildings and improvements thereon, and all the estate and rights of the Grantor in and to said premises.

SUBJECT TO any and all outstanding reservations, easements and rights-of-way, recorded and unrecorded, for public roads, railroads, pipelines, drainage ditches, sewer mains and lines, and public utilities affecting the property herein conveyed.

TO HAVE AND TO HOLD the above premises, subject to the easements, reservations, exceptions, restrictions, conditions, and covenants herein enumerated and set forth, unto the Grantee, its successors and assigns, forever.

There are excepted from this conveyance and reserved to the Grantor, all oil, gas, and other minerals in, under, and upon the lands herein conveyed, together with the right to enter upon the land for the purpose of mining and removing the same.

Pursuant to authority contained in the Federal Property and Administrative Services Act of 1949, as amended, and applicable rules, regulations and orders promul-

gated thereunder, the General Services Administration determined the property to be surplus to the needs of the United States of America and assigned the property to the Department of the Interior for conveyance to the Town of Kittery, Maine.

It is understood and agreed by and between the Grantor and Grantee, and Grantee, by acceptance of this deed does acknowledge that it fully understands the terms and conditions set forth herein and does further covenant and agree for itself, and its successors and assigns, forever, as follows:

1. The property shall be used and maintained for the public purposes for which it was conveyed in perpetuity as set forth in the program of utilization and plan contained in the application submitted by Grantee on the 25th day of October, 1972, as amended the 27th day of November, 1972, which program and plan may be further amended from time to time at the request of either the Grantor or Grantee, with the written concurrence of the other party, and such amendments shall be added to and become a part of the original application.

2. The Grantee shall within 6 months of the date of this deed erect and maintain a permanent sign or marker near the point of principal access to the conveyed area indicating that the property is a park or recreational area and has been acquired from the Federal Government for use by the general public.

3. The property shall not be sold, leased, assigned, or otherwise disposed of except to another eligible governmental agency that the Secretary of the Interior agrees in writing can assure the continued use and maintenance of the property for public park or public recreational purposes subject to the same terms and conditions in the original instrument of conveyance. However, nothing in this provision shall preclude the Grantee from providing related recreational facilities and services compatible with the approved application, through concession agreements entered into with third parties, provided prior concurrence to such agreements is obtained in writing from the Secretary of the Interior.

4. From the date of this conveyance, the Grantee, its successors and assigns, shall submit biennial reports to the Secretary of the Interior, setting forth the use made of the property during the preceding two-year period, and other pertinent data

establishing its continuous use for the purposes set forth above, for ten consecutive reports and as further determined by the Secretary of the Interior.

5. If at any time the United States of America shall determine that the premises herein conveyed, or any part thereof, are needed for the national defense, all right, title and interest in and to said premises, or part thereof determined to be necessary to such national defense, shall revert to and become the property of the United States of America.

6. As part of the consideration for this deed, the Grantee covenants and agrees for itself, its successors and assigns, that (1) the program for or in connection with which this deed is made will be conducted in compliance with, and the Grantee, its successors and assigns, will comply with all requirements imposed by or pursuant to the regulations of the Department of the Interior as in effect on the date of this deed (43 C.F.R. Part 17) issued under the provisions of Title VI of the Civil Rights Act of 1964; (2) this covenant shall be subject in all respects to the provisions of said regulations; (3) the Grantee, its successors and assigns, will promptly take and continue to take such action as may be necessary to effectuate this covenant; (4) the United States shall have the right to seek judicial enforcement of this covenant; (5) the Grantee, its successors and assigns, will (a) obtain from each other person (any legal entity) who through contractual or other arrangements with the Grantee, its successors or assigns, is authorized to provide services or benefits under said program, a written agreement pursuant to which such other persons shall, with respect to the services or benefits which he is authorized to provide, undertake for himself, the same obligations as those imposed upon the Grantee, its successors and assigns, by this covenant, and (b) furnish a copy of such agreement to the Secretary of the Interior, or his successor; and that this covenant shall run with the land hereby conveyed, and shall in any event, without regard to technical classification or designation, legal or otherwise, be binding to the fullest extent permitted by law and equity for the benefit of, and in favor of the Grantor and enforceable by the Grantor against the Grantee, its successors and assigns.

7. In the event there is a breach of any of the conditions and covenants herein contained by the Grantee, its successors and assigns, whether caused by the

legal or other inability of the Grantee, its successors and assigns, to perform said conditions and covenants, or otherwise, all right, title, and interest in and to the said premises shall revert to and become the property of the Grantor at its option, which in addition to all other remedies for such breach shall have the right of entry upon said premises, and the Grantee, its successors and assigns, shall forfeit all right, title and interest in said premises and in any and all of the tenements, hereditaments and appurtenances thereunto belonging; provided, however, that the failure of the Secretary of the Interior to require in any one or more instances complete performance of any of the conditions or covenants shall not be construed as a waiver or relinquishment of such future performance, but the obligation of the Grantee, its successors and assigns, with respect to such future performance shall continue in full force and effect:

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed in its name and on its behalf this the 27th day of February, 1973

UNITED STATES OF AMERICA

BY Maurice Arnold

Regional Director
Northeast Region
Bureau of Outdoor Recreation
1421 Cherry Street
Philadelphia, Pennsylvania

STATE OF Pennsylvania
COUNTY OF Philadelphia ss

On this 27th day of February, 1973, before me, the subscriber, personally appeared Maurice D. Arnold, to me known and known to me to be the Regional Director, Northeast Region, Bureau of Outdoor Recreation, of the United States Department of the Interior, a governmental agency of the United States of America, with offices at 1421 Cherry Street, Philadelphia, Pennsylvania, and known to me to be the same person described in and who executed the foregoing instrument as such Regional Director aforesaid, as the act and deed of the United States of America, for and on behalf of the Secretary of the Interior, duly designated, empowered and authorized so to do by said Secretary, and he acknowledged that he executed the foregoing instrument for and on behalf of the United States of America, for the purposes and uses therein described.

Carol A. Beecher
NOTARY PUBLIC

My Commission expires:

CAROL ANN BEECHER, NOTARY PUBLIC
PHILADELPHIA, PHILADELPHIA COUNTY
MY COMMISSION EXPIRES OCT. 13, 1975
Member, Pennsylvania Association of Notaries

The foregoing conveyance is hereby accepted and the undersigned agrees, by this acceptance, to assume and be bound by all the obligations, conditions, covenants and agreements herein contained.

TOWN OF KITTERY, MAINE

By John R. Kennedy
Town Manager
Title

STATE OF Maine)
COUNTY OF York) ss

Then personally appeared the above named John R. Kennedy, Town Manager, of the Town of Kittery, Maine, and acknowledged that he executed the foregoing instrument as his free act and deed in his said capacity for the purposes therein contained.

Before me,

York, ss:

Received MAR 22 1973 at 9:25 AM
and recorded from the original.

Barthelmy Kraft
Notary Public
Title

QUITCLAIM DEED COPY

The UNITED STATES OF AMERICA, acting by and through the Regional Director, Northeast Region, Bureau of Outdoor Recreation with offices at 1421, Cherry Street,, Philadelphia, Pennsylvania, pursuant to authority delegated by the Secretary of the Interior, and as authorized by the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, and particularly as amended by Public law 91-485. (84 Stat. 1084), and regulations' and orders promulgated thereunder (hereinafter referred to as Grantor), for and in consideration of the use and maintenance of the property herein conveyed for public park and public recreation purposes in perpetuity by the Town of Kittery, Maine (hereinafter referred to as Grantee) does hereby remise release, and quitclaim to Grantee, its successors and assigns, subject to the reservations, exceptions, restrictions, conditions and covenants hereinafter set forth, all right, title and interest of the Grantor in and to all that tract or parcel of land known as Wood Island, situated near the mouth of the Piscataqua River, County of York, State of Maine.

The property herein conveyed contains 1.25 acres, more or less, and. was formerly known as the Old Portsmouth Harbor Lifeboat Station, U-Me-449A, under the administrative jurisdiction of the Department of Transportation, an agency of the United States Government.

TOGETHER WITH the appurtenances, the buildings and improvements thereon, and all the estate and rights of the Grantor in and to said premises

SUBJECT TO any and all outstanding reservations, easements and rights-of-way, recorded and unrecorded, for public roads, railroads, pipelines, drainage ditches, sewer mains and lines, and public utilities affecting the property herein conveyed.

TO HAVE AND TO HOLD the above premises, subject to the easements, reservations, exceptions, restrictions, conditions, and covenants herein enumerated and set forth, unto the Grantee, its successors and assigns, forever.

There are excepted from this conveyance and reserved to the Grantor, all oil, gas, and other minerals in, under, and upon the lands herein conveyed, together with the right to enter upon the land for the purpose of mining and removing the same.

Pursuant to authority contained in the Federal Property and Administrative Services Act of 1949, as amended, and applicable rules, regulations and orders promulgated thereunder, the General Services Administration determined the property to be surplus to the needs of the United States of America and assigned the' property to the Department of the Interior for conveyance to the Town of Kittery Maine.

It is understood and agreed by and between the Grantor and Grantee, and Grantee, by acceptance of this deed does acknowledge that it fully understands the terms and conditions set forth herein and does further covenant and agree for itself, and its successors and assigns, forever, as follows:

1. The property shall be used and maintained for the public purposes for which it was conveyed in perpetuity as set forth in the program of utilization and plan contained in the application submitted by Grantee on the 25th day of October, 1972, as amended the 27th day of November, 1972, which program and. plan may be further amended from time to time at the request of either the Grantor or

38 Grantee, With the written concurrence of the other party and such amendments shall be added to and
39 become a part of the original application.

40 2. The Grantee shall within 6 months of the date of this deed erect and maintain a permanent sign or
41 marker near the point of principal access to the conveyed area indicating that the Property is-park or
42 recreational area and has been acquired from .the Federal Government for use by the general public.

43 3. The property shall not be sold, leased, assigned, or otherwise disposed of except to another eligible
44 governmental agency that the Secretary of the Interior agrees in writing can assure the continued use
45 and maintenance of the property' for public park or public recreational purposes subject to the same
46 terms and conditions in the original instrument of conveyance However, nothing in this provision shall
47 preclude the Grantee from providing related recreational facilities and services compatible with the
48 approved application, through concession agreements entered-into with third parties, provided prior
49 concurrence to such agreements is obtained in writing from the Secretary of the Interior.

50 4. From the date of this conveyance, the Grantee, its successors and assigns, shall sub it biennial reports
51 to the Secretary of the Interior, setting forth the use made of the property during the preceding two-
52 year period, and other pertinent data establishing its continuous use for the purposes set forth above,
53 for ten consecutive reports and as further determined by the Secretary of the Interior.

54 5. If at any time the United States of America shall determine that the premises herein conveyed, or any
55 part thereof, are needed for the national defense, all right, title and interest in and to said premises, or
56 part thereof determined to be necessary to such national defense, shall revert to and become the
57 property of the United States of America.

58 6. As part of the consideration for this deed, the Grantee covenants and agrees for itself, its successors
59 and assigns, that

60 (1) the program for, or in connection with, which this deed is made will be conducted in compliance
61 with; and the Grantee, its successors and assigns, will comply with all requirements imposed by or
62 pursuant to the regulations of the Department of the Interior as in effect on the date of this deed (43
63 C.F.R. Part 17) issued under the provisions of Title VI of the Civil Rights Act of 1964;

64 (2) this covenant shall be subject in all respects to the provisions of said regulations;

65 (3) the Grantee, its successors and assigns, will promptly take and continue to take such action as may
66 be necessary to effectuate this covenant;

67 (4) the United States shall have the right to seek judicial enforcement of this covenant;

68 (5) the Grantee, its successors and assigns, will

69 (a) obtain from each other person (any legal entity) who through contractual or other arrangements
70 with the Grantee, its successors or assigns, is authorized to provide services or benefits under said
71 program, a written agreement pursuant to Which such other persons shall; With respect to the services
72 or benefits Which he is authorized to provide, undertake for himself, the same obligations as those
73 imposed upon the Grantee, its successors and assigns; by this covenant, and

(b) furnish a copy of such agreement to the Secretary of the Interior, or his successor; and that this covenant shall run with the land hereby conveyed, and shall in any event, without regard to technical classification or designation, legal or otherwise, be binding to the fullest extent permitted by law and equity for the benefit of, and in favor of the Grantor and enforceable by the Grantor against the Grantee, its successors and assigns.

7. In the event there is a breach of any of the conditions and covenants herein contained by the Grantee, its successors and assigns, whether caused by the legal or other inability of the Grantee, its successors and assigns, to perform said conditions and covenants, or otherwise, all right, title, and interest in and to the said premises shall revert to and become the property of the Grantor at its option, which in addition to all other remedies for such breach shall have the right of entry upon said premises and the Grantee, its successors and assigns, shall forfeit all right, title and interest in said premises and in any and all of the tenements, hereditaments and appurtenances thereunto belonging; provided, however, that the failure of the Secretary of the Interior to require in any one or more instances complete performance of any of the conditions or covenants shall not be construed as a waiver or relinquishment of such future performance, but the obligation of the Grantee, its successors and assigns, with respect to such future performance shall continue in full force and effect:

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed in its name and on its behalf this the 27th day of February 1973.

Aug 10. 7:40 PM
2015

**NATIONAL MARITIME HERITAGE GRANT PROGRAM
PRESERVATION AGREEMENT**

THIS CONVEYANCE is made this ____ day of ____, 2015 pursuant to 33 MRSA §§ 1551-1555 by and between the Town of Kittery, having its location at 200 Rogers Road, Kittery, Maine, hereinafter sometimes called the Grantor, and the State of Maine through the Director of the Maine Historic Preservation Commission, hereinafter sometimes called the Grantee.

WITNESSETH

WHEREAS THE Grantor is owner of certain premises known as the Wood Island Life Saving Station, Wood Island, Kittery, York County, Maine, which premises is eligible to be listed in the National Register of Historic Places (National Register) under the National Historic Preservation Act of 1966 (P.L. 89665, 16 U.S.C. § 470a, *et. seq.*); and

WHEREAS THE sum of \$200,000 in grant-in-aid financial assistance from the National Park Service of the United States Department of the Interior has been granted to the Wood Island Life Saving Station Association (WILSSA) for the purpose of preserving the Wood Island Life Saving Station, a building that is important culturally, historically, and/or architecturally; and

WHEREAS THIS preservation easement is granted as a condition of the eligibility of WILSSA for the financial assistance from the National Park Service of the United States Department of the Interior appropriated from the National Maritime Heritage grant program; and

WHEREAS THE State of Maine through the Director of the Maine Historic Preservation Commission is presently responsible for precluding any activity or omission at the premises which would destroy or impair its value to the public as an historic place; and

WHEREAS THE Grantor is willing to grant to the State of Maine the preservation interest as hereinafter expressed for the purpose of insuring that the value of the premises for such purposes will not be destroyed or impaired.

NOW THEREFORE in consideration of the sum of One Dollar and other valuable consideration paid to the Grantor, the receipt whereof is hereby acknowledged, the Grantor does hereby give, grant, bargain, sell and convey, with covenant of warranty, to the State of Maine a preservation interest in the following described lots or parcel of land, with the buildings and improvements thereon (the real property together with the buildings and improvements thereon and the fixtures attached thereto and the appurtenances thereof, being hereinafter collectively referred to as the "Property") located in Kittery, York County, Maine and described in the York County Registry of Deeds, Book __, Page ____.

The preservation interest herein granted shall be of the nature and character hereinafter expressed and shall be binding upon the Grantor; its successors and assigns.

The Property is comprised of grounds, collateral or appurtenant improvements, and the Wood Island Life Saving Station building (hereinafter referred to as the "Building").

In order to make more certain the full extent of Grantor's obligations and the restrictions on the Property, and in order to document the nature and condition of the Property, including significant interior elements in spatial context, a list of character-defining materials, features, and spaces is incorporated as Exhibit "A" at the end of this agreement. To complement Exhibit "A", Grantor personnel have compiled a photographic record, including photographer's affidavit, black and white photographs and negatives, or electronic image files saved as high resolution images, photograph logs, and a keyed location map. The Grantor agrees that the nature and condition of the Property on the date of execution of this easement is accurately documented by the architectural drawings and photographic record, which shall be maintained for the life of this easement in the Grantee's conservation easement file for the Property.

The foregoing description of the Property may be amended, replaced, or elaborated upon in more detail, and a description of the style, landscaping and similar particulars of the grounds, and any collateral or appurtenant improvements on the Property may be added, by an instrument in writing, signed by both parties hereto, making reference to this Preservation Agreement and filed of record in the York County Registry of Deeds. If and when such an instrument is placed of record, it shall be deemed to be a part of this Preservation Agreement as if set out herein.

For the purpose of preserving and protecting the Property, including its significance and value to the public as an historic place, the Grantor does hereby covenant and agree, on behalf of itself, its successors and assigns with the Grantee, its successors and assigns, to the following for a period of twenty (20) years beginning September 30, 2017 or when the exterior of the Building is restored, whichever comes first:

1. The Grantor agrees to assume the cost of continued maintenance and repair of the exterior of the Building, in accordance with *The Secretary of the Interior's Standards for the Treatment of Historic Properties* (see 36 CFR Part 68), so as to preserve the architectural and historical integrity of the Building as documented by the Final Project Report at the conclusion of the grant period. Nothing in this agreement shall prohibit the Grantor from seeking financial assistance from any source available to him.
2. No construction, alteration, remodeling, changes of color or surfacing, or any other thing shall be undertaken or permitted to be undertaken on the Property which would affect the structural integrity, the appearance, the cultural use, or archaeological value of the Property without the express prior written approval of the State of Maine through the Director of the Maine Historic Preservation Commission, or any successor agency.
3. Grantee, its agents and designees shall have the right to inspect the Property at all reasonable times in order to ascertain whether or not the terms and conditions of this Preservation Agreement are being complied with.
4. Grantor agrees to permit public access to view the grant-assisted work no less than 12 days a year on an equitably spaced basis, weather permitting. The Grantor is not required to provide boat access. Nothing in this agreement will prohibit a reasonable nondiscriminatory admission fee, comparable to fees charged at similar facilities in the area.

5. In the event that the Property or any significant part of it shall be damaged or destroyed by fire, flood, windstorm, earth movement, or other casualty, the Grantor shall notify the Grantee in writing within 14 calendar days of the damage or destruction, such notification including what, if any, emergency work has already been completed. No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the Property and to protect public safety, shall be undertaken by the Grantor without the Grantee's prior written approval indicating that the proposed work will meet the Standards. The Grantee shall give its written approval, if any, of any proposed work within 60 days of receiving the request from the Grantor. If after reviewing the condition of the Property, the Grantee determines that the features, materials, appearance, workmanship, and environment (or setting) which made the Property significant, as documented by the Final Project Report as the conclusion of the grant period, have been lost or irreparably damaged, the Grantee will then notify the Grantor that the agreement is null and void. If the damage or destruction that results in the Property losing its significance is deliberately caused by the gross negligence or other actions of the Grantor or successor owner, then the Grantee will initiate requisite legal action to recover, at a minimum, the Federal grant funds applied to the Property which will then be returned to the U.S. Government.
6. The Grantor has agreed to comply with the Maine Human Rights Act (5 MRSA §§ 4551 *et seq.*).
7. The Grantor has agreed to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Americans with Disabilities Act (42 U.S.C. 12204), and with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). These laws prohibit discrimination on the basis of race, religion, national origin, or disability. In implementing public access, reasonable accommodation to qualified disabled persons shall be made in consultation with the Grantee.
8. If the Grantor fails to observe or if the Grantor violates any covenant, agreement, or provision contained herein, then the Grantee shall in addition to all other remedies available at law or in equity, have the right to enforce this Preservation Agreement, including each of its provisions, by specific performance or injunctive relief.
9. The Preservation Agreement set forth herein is intended by the parties hereto to preserve the historic integrity of the Property pursuant to the provisions of 33 MRSA §§ 1551-1555, or other provisions of law that may be applicable.
10. This Preservation Agreement provides the Grantee with additional legal rights and does not supercede or replace any pre-existing legal obligations of the Grantor or legal rights of the Grantee.
11. The Preservation Agreement set forth herein shall be binding upon and shall inure to the benefit of the Grantor and the Grantee and their respective successors and assigns. **TO HAVE AND, TO HOLD** the aforegranted and bargained Easement with all the privileges

and appurtenances thereof to the said State of Maine through the Director of the Maine Historic Preservation Commission, its successors and assigns, to its and their use and behoof for a period of twenty (20) years.

12. SEVERABILITY CLAUSE

It is understood and agreed by the parties hereto that if any part, term, or provision of this agreement is held to be illegal by the courts, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular part, term, or provision held to be invalid.

IN WITNESS WHEREOF, the Town of Kittery, signed by

Jeffrey D. Thomson, Jeffrey Pelletier, Charles Denault, Russell White,
Judy Spiller, and Kenneth F. Lemont, its officers
duly authorized and have hereunto set hand and seal for the purpose set forth above, all as of the
day and year first written above.

TOWN OF KITTERY

By See list of signatures
on the next page signed
in the wrong place.

Then personally appeared the above named Jeffrey D. Thomson, Jeffrey Pelletier,
Charles Denault, Russell White, Judy Spiller and Kenneth F. Lemont, of
the Town of Kittery, and acknowledged the foregoing instrument to be their free act and deed in
said capacity and the free act and deed of the Town of Kittery, Kittery, Maine.

Before me,

Margann Fleau 8/10/15
Notary Public Date
Exp. 4/11/2022

STATE OF MAINE

By Evan S. Fitzpatrick

Name: Earle G. Shettleworth, Jr.

Title: Director

Then personally appeared the above named Earle G. Shettleworth, Jr.,
of the Maine Historic Preservation Commission, and acknowledged the foregoing instrument to
be his free act and deed.

Before me,

Claudette Coyle 9/2/15
Notary Public Date

6-1 vote

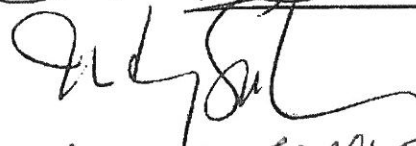
8/10/15

Jeff D. Thomson



CRK





Kenneth F. Remont

**BIDDING CONTRACT
DOCUMENTS FOR
CLEANUP & RESTORATION OF
THE WOOD ISLAND LIFE SAVING
STATION KITTERY, MAINE**

**Project Summary
(Page 2)**

The Wood Island Life-Saving Station was constructed in 1907. After the formation of the US Coast Guard was formed in 1915 through the unification of the US Live-Saving Service and the US Revenue Cutter Service, the station saw continuous use under the stewardship of the US Coast Guard until the beginning of World War II.

During World War II, the station was part of an elaborate defense network to protect the Portsmouth Naval Yard from enemy submarines. A series of metal mesh nets was constructed across the entrance to the harbor, and the station's observatory was used as a lookout to coordinate the opening and closing of the anti-submarine nets.

The station was decommissioned and closed in 1948, and has not been used since. The National Park Service took ownership from the Coast Guard and in 1973 transferred the property to the Town of Kittery (the Town). In 2011, the Wood Island Life Saving Station Association (WILSSA) was founded to assist the Town with the historic restoration of the station and reuse of the building for the enjoyment of the public as a maritime museum.

This bid package represents the first phase of this work: the clean up and exterior repair of the historic station. The Town of Kittery has received a US Environmental Protection Agency (USEPA) Brownfields Cleanup Grant in the amount of \$200,000. This grant will fund the abatement and cleanup of hazardous building materials, including asbestos, lead-based paint and bird guano, and associated documentation and public outreach. WILSSA has received a \$200,000 grant from the National Park Service's Maritime Heritage Program and \$200,000 appropriated by the State of Maine to be used for restoration of the exterior of the building. Later phases are expected to repair the deteriorated sea walls and marine railway as well as construct a pier and complete the restoration of the interior.

The Town will contract separately with a licensed environmental cleanup/abatement contractor or general/prime contractor with a licensed environmental cleanup/abatement subcontractor. WILSSA will contract separately with a qualified historical restoration/preservation contractor. The project goal is to award the abatement and restoration contracts to a single general/prime contractor with experience working with historic sites, such that both the Town and WILSSA have a single point of contact. Cleanup/abatement and historical restoration/preservation contractors are encouraged to team and submit a single bid.

The Wood Island Life-Saving Station has been declared eligible for the National Register of Historic Places by the Maine State Historic Preservation Office. Therefore, work on the building should conform with the Secretary of the Interior's Standards for the Treatment of Historic Properties, 1995, the bases for stewardship of historic resources in the US. In addition, all cleanup related work must comply with federal grant funding requirements, including, but not limited to, Davis-Bacon Act requirements, Disadvantaged Business Entity (DBE) solicitation requirements, and Equal Opportunity Employment and Affirmative Action requirements.

“CLEANUP”

SECTION 01010 (Pages 166 – 168)

SUMMARY OF WORK

1.0 GENERAL

1.01 SCOPE

1. The work covered by the cleanup specifications include the furnishing of all labor, materials, equipment and incidentals and the performance of all operations in connection with the cleanup work, as herein specified.

2. The work covered by this Section shall include the property described in this document and shown in the figures located in Appendices A and B.

1.02 GENERAL

1. The cleanup project generally consists of abatement of hazardous materials from the Wood Island Life Saving Station, including removal and disposal of avian waste, abatement of asbestos-containing materials identified throughout the Site building, and the removal and/or stabilization of lead-based paint (LBP) in accordance with the Maine State Historic Preservation Office (SHPO) approved rehabilitation and restoration plan.

2. Asbestos-containing materials identified at the Wood Island Life Saving Station in the “Hazardous Materials Inventory” prepared by Ransom Environmental Consultants, Inc. (Ransom) on September 8, 2010 (Appendix A), shall be removed in accordance with Maine Department of Environmental Protection (Maine DEP) requirements. The CONTRACTOR shall notify the Maine DEP of the intent to remove asbestos- containing materials from the site building on behalf of the OWNER and obtain necessary permits.

3. For the purposes of this project and the base bid items, abatement of lead-based paint (LBP) generally includes the stabilization and making intact lead based painted surfaces (removal by wet or dry scraping flaking and chipping paint) within the Site building, as noted in the HMI, in preparation for final encapsulation (painted primer/marker layer and finish painting) to be completed by others. In some locations, where building components are in poor condition, lead-based paint remediation will be accomplished through demolition and removal. CONTRACTOR shall review specified cleanup performance standards in Section 01025 – Measurement & Payment as dictated by rehabilitation and restoration scope for each room or area.

4. Remediation work shall be conducted in coordination with the historic preservation work to be performed by others, under a separate contract with the Wood Island Life Saving Station Association. Remediation activities shall not compromise the historic fabric of the Site; decisions regarding items of historical significance shall be made by the Maine State Historic Preservation Office and historic preservation contractor.

5. The CONTRACTOR shall submit to the OWNER and ENGINEER a plan identifying the sequence of events and schedule for this project.

6. Obtain necessary abatement and construction/demolition permits from the Town of Kittery, Maine and the State of Maine.

7. Painted surfaces may be coated with lead-containing paint. Contractors are required to protect their workers in accordance with state and federal regulations.

KITTERY – WILSSA – WOOD ISLAND – REPAIR AGREEMENT - EXHIBIT C

1.03 PROTECTION

1. Care shall be taken to protect the public at all times. Materials shall not be deposited or stored on adjacent properties (without permission) or in areas accessible to the public.
2. Use all means necessary to prevent the spread of dust during throughout the performance of the work encompassed by this contract. Dust control shall be incidental to the project and shall be evaluated on the performance basis of not allowing dust to leave the project Site. Thoroughly moisten all surfaces as required to prevent dust from spreading to adjacent properties, as well as prevent dust from being a nuisance to the workers and neighbors.
3. Use all means necessary to protect building components and items identified to remain or be restored. The CONTRACTOR shall be responsible for any damage to building components of historical significance.

1.04 PROTECTION OF ADJACENT STRUCTURES

1. The abatement work shall be carried out in a manner that will insure the safety and protection of adjacent properties, the onsite structures, and persons and equipment occupying such adjacent properties against any damages or injuries, which might occur from activities at the site, and so as not to interfere with the use of adjacent buildings and structures or the free and safe passage to and from the same.
2. Take adequate precautions to protect all walks, roads, streets, curbs, pavements, trees and plantings, inside and outside the property line, and repair and replace or otherwise make good, as directed by the OWNER, Town (OWNER's AGENT), or ENGINEER, any such or other damage so caused.
3. The CONTRACTOR shall install adequate barricades, barriers, and fences to ensure the public safety during the services.

1.05 UTILITIES

1. The CONTRACTOR shall be responsible for supplying electricity, water, and sanitary facilities during the completion of the remediation activities.
2. Discontinuance or Interruption: Before starting remediation, the CONTRACTOR shall be solely responsible for making all necessary arrangements and for performing any necessary work involved in connection with the continuance or interruption of all public and private utilities or services under the jurisdiction of the utility companies or corporations, Police Department, Fire Department, and Public Works Department such as gas, electricity, steam, low tension system, telephone, telegraph, police signal, fire alarm, water, sanitary sewer, storm drainage, and without limiting the generality of the foregoing, including any system under this contract.
3. Protection: Should any damage occur to a utility which is to remain as a result, in the judgment of the Town, of this operation, repair all damage to any such utility to the satisfaction of the OWNER, Town (AGENT for OWNER), or ENGINEER, at no expense to the OWNER.

KITTERY – WILSSA – WOOD ISLAND – REPAIR AGREEMENT - EXHIBIT C

Rykerson Architecture Wood Island Life Saving Station Exterior Rehabilitation - February 8, 2016

“RESTORATION”

SECTION 01010 – Pages 375 - 376

PART 1 - GENERAL

1.1 WORK COVERED BY CONTRACT DOCUMENTS

A. Project Identification: Project consists of structural stabilization, repair to building envelope, repair and salvage of historic fabric, and preparation for further restoration of the Wood Island Life Saving Station. Project will be undertaken with concurrent contract: Hazardous Materials Remediation.

B. The Contract Documents, dated February 15, 2016 were prepared for Project by Rykerson Architecture, 1 Salt Marsh Lane, Kittery Point ME 03905.

C. The Work consists of renovations and alterations including but not limited to:

1. Site and Historic Fabric protection.

2. Selective removal of

a. Deficient structural elements. b. Deteriorated materials.

c. Abandoned fixtures, systems, and interventions after 1942.

3. Repair, cleaning, or selective replacement of

a. Selected structural elements. b. Flashings and trim.

c. Wall sheathing. d. Roof sheathing.

e. Interior finishes.

f. Casework.

4. Salvage of:

a. Trim, finishes, and fixtures as indicated.

5. Provide New:

a. Wood roof waterproofing, shakes and gutters system.

b. Infiltration barrier and cedar wall shingles. c. Weatherproofing of openings.

d. Interior partitions, ceiling, and finishes indicated.

e. Lighting protection.

B. Project will be constructed under a general construction contract.

1. ‘Stipulated Sum’ AIA contract A101.

1.2 USE OF PREMISES

General: Contractor shall have full use of premises for construction operations, including use of Project Site, during construction period. Contractor's use of premises is limited only by Owner's right to perform work or to retain other contractors on portions of Project. Special attention should Contract should be timed to minimize building exposure to the elements.

KITTERY – WILSSA – WOOD ISLAND – REPAIR AGREEMENT - EXHIBIT C

153 1.3 SPECIFICATION FORMATS AND CONVENTIONS

154 A. Specification Format: The Specifications are organized into Divisions and Sections using the 16-
155 division format and CSI/CSC's "MasterFormat" numbering system.

156 B. Specification Content: The Specifications use certain conventions for the style of language and
157 the intended meaning of certain terms, words, and phrases when used in particular situations. These
158 conventions are as follows:

159 1. Abbreviated Language: Language used in the Specifications and other Contract Documents is
160 abbreviated. Words and meanings shall be interpreted as appropriate. Words implied, but not stated,
161 shall be inferred as the sense requires. Singular words shall be interpreted as plural, and plural words
162 shall be interpreted as singular where applicable as the context of the Contract Documents indicates.

163 2. Imperative mood and streamlined language are generally used in the Specifications.
164 Requirements expressed in the imperative mood are to be performed by Contractor. Occasionally, the
165 indicative or subjunctive mood may be used in the Section Text for clarity to describe
166 responsibilities

167 that must be fulfilled indirectly by Contractor or by others when so noted.


168 a. The words "shall," "shall be," or "shall comply with," depending on the context, are implied
169 where a colon (:) is used within a sentence or phrase.

170 END OF SECTION 01010

NOTES

1. REFERENCE PHOTO: MAINE GIS SYSTEM 2010, LOW TIDE SERIES
2. ISLAND VEGETATION LIMITS MEASURED IN SEPT., 2012, ARE SIMILAR TO VEGETATION EXTENT TRACED AS SHOWN
3. ELEVATIONS IN FEET TAKEN SEPT. 2012 BY AUTO LEVEL TO APPROXIMATE MEAN LOWER LOW WATER OBSERVED AND BASED ON NOAA PORT POINT TIDE GAUGE. RECORDED WATER LEVELS IN SEPT. 2012 WERE APPROXIMATELY 1.5 M FEET BELOW RECORDED MEAN TIDE LEVELS. ELEVATIONS IN FEET TO APPROXIMATE MLLW DATUM BASED ON HEADING SOUNDING, USING APPROX. TIDE MEASURE OFFSETS NOV. 2014. MHW = 9.0; MLLW = 11.4

KITTERY - WILSSA - WOOD ISLAND
REPAIR AGREEMENT - EXHIBIT D

	Tighe & Bond www.tigheandbond.com	WOOD ISLAND KITTERY, MAINE YORK COUNTY PORTSMOUTH HARBOR	FIGURE 1
	SITE PLAN	Wood Island Life Saving Station Association PO Box 1111 ME 03905 AUG 31, 2015 REV OCT 30, 2015	





STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE
GOVERNOR

AVERY T. DAY
ACTING COMMISSIONER

December 2015

Sam Reid
Wood Island Life Saving Station Association
P.O. Box 11
Kittery Point, ME 03905

RE: Natural Resources Protection Act Application, Kittery
DEP #L-26596-4E-A-N/L-26596-TW-B-N/ L-26596-4P-C-N

Dear Mr. Reid:

Please find enclosed a signed copy of your Department of Environmental Protection land use permit. You will note that the permit includes a description of your project, findings of fact that relate to the approval criteria the Department used in evaluating your project, and conditions that are based on those findings and the particulars of your project. Please take several moments to read your permit carefully, paying particular attention to the conditions of the approval. The Department reviews every application thoroughly and strives to formulate reasonable conditions of approval within the context of the Department's environmental laws. You will also find attached some materials that describe the Department's appeal procedures for your information.

If you have any questions about the permit please contact me at (207) 615-6426 or at christine.woodruff@maine.gov.

Sincerely,

Christine Woodruff, Project Manager
Bureau of Land Resources

pc: File

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826

BANGOR
106 HOGAN ROAD, SUITE 6
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769
(207) 764-0477 FAX: (207) 760-3143



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017

DEPARTMENT ORDER

IN THE MATTER OF

WOOD ISLAND LIFE SAVING) NATURAL RESOURCES PROTECTION ACT
STATION ASSOCIATION) COASTAL WETLAND ALTERATION
Kittery, York County) SIGNIFICANT WILDLIFE HABITAT
MARINE RAILWAY, PIER, SEAWALLS) WATER QUALITY CERTIFICATION
L-26596-4E-A-N (approval))
L-26596-TW-B-N (approval))
L-26596-4P-C-N (approval)) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S.A. Sections 480-A et seq. and Section 401 of the Federal Water Pollution Control Act, the Department of Environmental Protection has considered the application of WOOD ISLAND LIFE SAVING STATION ASSOCIATION with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. Summary: The applicant proposes to construct a replica marine railway in a coastal wetland to launch lifesaving boats from the garage of the life saving station where they are stored into the water as part of the restoration of the lifesaving station. The marine railway consists of two sets of railway tracks that emerge from the garage and then converge to one track approximately 58 feet from the garage, go over a seawall proposed to be reconstructed, and extend 175 feet beyond the seawall to about 68 feet beyond the mean low water line so that boats can be launched at low tide. The supports of the marine rail consist of 13 timber frames and three 12-foot by 12-foot rock-filled timber cribs secured to the ledge with steel dowels and tie down rods. Timber caps that are 12.4 feet wide will rest on the two timber supports, and stringers between the timber caps support two rails inside with two 3.1-foot wide decks on the outside.

The applicant also proposes to repair, or replace and expand two existing seawalls in the coastal wetland that are in disrepair. The north wall, which is below the highest annual tide, will be removed and replaced in its existing location with a reinforced concrete wall that will be two feet higher than the existing wall with drainage weeps at the toe. The wall will be lengthened on both ends to prevent material from washing out from around the ends when the wall is overtopped by ocean waves. Stacked and fitted armor stones will be placed landward of the wall to help maintain the stability of the wall during storm conditions. Additional rock fill will be added landward of the armor stones for additional stability of the wall and for the safety of visitors to the island when they walk around to view the marine railway area. The south wall, which has the highest annual tide line at its seaward face, will be overlaid with six inches of reinforced concrete on both faces and be increased in height by two feet. The south seawall will also have stacked and fitted armor stone landward of the wall. The south wall project includes removing cobble that

was washed into the basement of the building by storm waves and placing the cobble landward of the seawall. A rock berm will be added to the west end of the south wall to prevent the cobble from washing around the end of the wall when the wall is overtopped by waves. All armor stone and rock fill for the project will be sourced from the mainland with the exception of the cobble from the basement.

The project includes a six-foot wide timber mat pathway around the building to provide a handicap-accessible route around the building.

The applicant also proposes to construct a pier on the northwest side of the island. The purpose of the project is to allow tour boats approximately 60 to 65 feet long to provide transportation service to the island for the public to visit this historic site. The proposed eight-foot wide pile-supported pier will start at the existing lifesaving station building and extend approximately 54 feet over the proposed fill and seawall, and then extend an additional 112 feet further into the coastal wetland. The applicant proposes a four-foot wide by 80-foot long seasonal ramp for handicap accessibility and two, ten-foot wide by 24-foot long seasonal floats to accommodate the larger boats bringing groups of people to the island. The ramp will be stored on the pier in the off season. The floats will be stored on the marine railway; if it is found that winter storm conditions are too severe for this storage, then an alternate upland storage location will be investigated.

The project is shown on a set of drawings, the first of which is titled "Site Plan, Wood Island, Kittery, Maine" prepared by Tighe & Bond, and dated August 15, 2015 with a most recent revision date on any of the plans of October 15, 2015. The project site is located on Wood Island in the Town of Kittery.

B. Current Use of the Site: The site is a 1.5-acre island with approximately a quarter of an acre that is occupied by upland vegetation and a dilapidated historic life saving station. The upland vegetation consists of scrubby brush and small tree growth. The upland appears to be frequently overwashed by ocean waves based on the large amount of lobster trap remnants and the layer of cobbles that cover the upland area. There are remnants of the old marine railway at the site; there is weathered rail, and concrete and wooden supports in the upland and rail remnants and iron rods protruding from the ledge in the intertidal area. The upper intertidal area is a mix of bare ledge and cobble. The existing north seawall on the harbor side of the island is in the upper intertidal area and has been repaired with shotcrete; some parts have fallen down and other parts are standing but damaged. The south seawall on the open ocean side of the island is in the uppermost intertidal area, has been repaired with shotcrete, and is mostly intact with some failures of the shotcrete. The rest of the island is bare ledge with a mix of cobble, gravel and sand. Wood Island was deeded to the town in 1973 and the applicant has a signed agreement with the town titled "Wood Island Life Saving Station Repair Agreement", signed in October 2013, allowing the restoration, repair and maintenance of the site.

2. EXISTING SCENIC, AESTHETIC, RECREATIONAL OR NAVIGATIONAL USES:

In accordance with Chapter 315, Assessing and Mitigating Impacts to Scenic and Aesthetic Uses, the applicant submitted a copy of the Department's Visual Evaluation Field Survey Checklist as Appendix A to the application along with a description of the property and the proposed project. The applicant also submitted several photographs of the proposed project site including aerial and historic photographs of the project site. Department staff visited the project site on March 31, 2015.

The proposed project is located on the Atlantic Ocean, which is a scenic resource visited by the general public, in part, for the use, observation, enjoyment and appreciation of its natural and cultural visual qualities. The applicant has limited the construction of the marine railway to a replica of the previously existing railway and has limited the increase in height of the seawalls to that necessary to reduce damage to the historic structure and to account for sea level rise. These measures will help to reduce the visibility of the changes in the historic structures from the scenic resource. The applicant has limited the size of the proposed pier to that necessary to provide handicap access to the island. The existing seawalls are concrete and the seaward side of the walls will be repaired with concrete to be compatible with the existing seawall materials. The marine railway will replace the dilapidated remains of the existing marine railway in the upland and will be placed between two sections of seawall in the upper intertidal area and two ledge outcroppings in the lower intertidal area so the proposed marine railway will not be visually prominent unless viewed from the northwest side at low tide. The existing building will continue to be the spatially dominant feature on the island.

The proposed project was evaluated using the Department's Visual Impact Assessment Matrix and was found to have an acceptable potential visual impact rating. Based on the information submitted in the application, the visual impact rating, and the site visit, the Department determined that the location and scale of the proposed activity is compatible with the existing visual quality and landscape characteristics found within the viewshed of the scenic resource in the project area.

The Department did not identify any issues involving existing recreational and navigational uses.

The Department finds that the proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses of the protected natural resource.

3. SOIL EROSION:

The seawalls will be repaired with concrete, armor stone and rock fill. The armor stone and rock fill has been sized to be resistant to movement by any waves that overwash the wall. The applicant proposes to schedule construction of the project during low tide conditions so that no construction is conducted in the water. The repair of the north wall will protect an eroding shoreline near where the existing wall has recently failed. The

marine railway will be secured to concrete supports in the upland and upper intertidal area and pinned to wooden supports and ledge in the lower intertidal area. The pier will be constructed with wooden pilings pinned to ledge. These types of construction are not expected to result in significant soil disturbance.

The Department finds that the activity will not cause unreasonable erosion of soil or sediment nor unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.

4. HABITAT CONSIDERATIONS:

The Department of Marine Resources (DMR) stated that the proposed project should not cause any significant adverse impact to marine resources.

The Maine Department of Inland Fisheries and Wildlife (MDIFW) reviewed the proposed project and visited the site on March 31, 2015. MDIFW stated that the coastal wetland portion of the project is mapped as Tidal Waterfowl and Wading Bird Habitat, which is Significant Wildlife Habitat as defined under the Natural Resources Protection ACT (NRPA) Chapter 335. MDIFW stated that minimal impacts to wildlife are anticipated from this project.

The Department finds that the activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life.

5. WATER QUALITY CONSIDERATIONS:

The applicant proposes to use lumber treated with chromated copper arsenate (CCA) or other pressure-treated lumber to construct the marine railway and the pier. To protect water quality, all pressure-treated lumber must be cured on dry land in a manner that exposes all surfaces to the air for 21 days prior to the start of construction.

Provided that all pressure-treated lumber is cured as described above, the Department finds that the proposed project will not violate any state water quality law, including those governing the classification of the State's waters.

6. WETLANDS AND WATERBODIES PROTECTION RULES:

The protected natural resource is a coastal wetland surrounding Wood Island. The upper intertidal area is sand, gravel, and small bare cobble. The mid and lower intertidal area is ledge and large cobble with some Rockweed, Sea lettuce, Irish moss, periwinkles and small barnacles.

The applicant proposes to directly alter 1,104 square feet of coastal wetland to reconstruct the north seawall and to add stone fill on the landward side. The applicant proposes to

directly alter 450 square feet of coastal wetland for the marine railway's support posts and three rock and timber cribs and approximately 953 square feet of indirect impact to coastal wetland as a result of shading impacts from the decking and rails of the marine railway. The applicant proposes to directly alter 20 square feet of coastal wetland to construct the support posts for the pier, and approximately 1,696 square feet of indirect impacts to coastal wetland as a result of shading from the pier, ramp, and float. The total direct impacts for the proposed project are 1,574 square feet and the total indirect impacts are 2,649 square feet.

The Wetland and Waterbodies Protection Rules, 06-096 CMR 310, interpret and elaborate on the Natural Resources Protection Act (NRPA) criteria for obtaining a permit. The rules guide the Department in its determination of whether a project's impacts would be unreasonable. A proposed project would generally be found to be unreasonable if it would cause a loss in wetland area, functions and values and there is a practicable alternative to the project that would be less damaging to the environment. Each application for a NRPA permit that involves a coastal wetland alteration must provide an analysis of alternatives in order to demonstrate that a practicable alternative does not exist.

A. Avoidance. No activity may be permitted if there is a practicable alternative to the project that would be less damaging to the environment. The applicant submitted an alternatives analysis for the proposed project completed by Waterfront Engineers and dated January 2015. The purpose of the project is to improve the seawalls to provide additional protection from waves for the lifesaving station building to be restored, to build a replica of the previously existing marine railway as part of the restoration of the life saving station, and to construct a pier for access to the island by recreational and commercial boats including tour boats.

The applicant examined alternatives to the repair and expansion of the seawalls and the placement of stone fill materials landward of them. The applicant found that the waves overtop the seawalls and push cobble into the basement of the building and also cause water and rock damage to the building. The no action alternative was found to be unacceptable because it would allow further damage and eventual loss of the historic building. Repair of the existing seawalls with just shotcrete was rejected because the past repairs completed with shotcrete proved to be expensive and to have a short service life. Replacement of the existing seawalls was evaluated with both cast in place and precast concrete options but was determined to be prohibitively expensive. The proposed wall construction with rock fill inshore of the wall was selected because of the cost and the protection it would provide to the building.

The applicant is proposing to construct a working marine railway to a close replica of the previously existing marine railway based on the project plans found in the historic archives. Alternatives were considered and rejected because they would not meet the project purpose of reconstructing an accurate replica of the original marine railway.

The applicant examined alternatives to the proposed pier system for public access to the island but determined that access to the island for recreational and commercial boats, including tour boats up to 65 feet long, would require a pier so that the access would be safe. Taking no action and not constructing a pier would require landing small boats on the beach, which would not be acceptable for providing access for the tour boats nor provide handicap accessibility. The applicant determined that in order to meet the project purpose, some impact to the coastal wetland could not be avoided.

B. Minimal Alteration. The amount of coastal wetland to be altered must be kept to the minimum amount necessary for meeting the overall purpose of the project. The applicant minimized wetland impacts for rehabilitating the south seawall by limiting the amount of reinforced concrete overlay to six inches wide on the side of the wall that is coastal wetland. The applicant has minimized wetland impacts for the north seawall by limiting the rock fill to the area between the seawall and the building to protect the building and prevent seawall failure during extreme weather conditions.

The applicant has minimized the wetland impacts from the pier system by using a long ramp in order to minimize the length of the pier. The pier design minimizes direct wetland impacts by using widely spaced support posts. The float and the pier are the minimum length and width necessary for providing handicap access and safely landing passengers the volume of passengers anticipated. Additionally, the ramp and float are to be in place only seasonally.

The applicant has minimized the wetland impacts from the marine railway by using the original design which elevates the rail system up on timber posts where possible and only uses crib supports on the seaward end of the rail system where they are necessary to withstand wave action.

C. Compensation. In accordance with Chapter 310 Section 5(C)(6)(b), compensation is required to achieve the goal of no net loss of coastal wetland functions and values since the project will result in over 500 square feet of fill in the resource, which is the threshold over which compensation is generally required.

The rocky intertidal area has varying benthic life density with very low density near the seawalls. Rockweed density increases in the mid tidal zone and trends to Irish moss and periwinkle habitat in the lower tidal zone. The rockweed is a common Maine intertidal algae that is commonly harvested for a wide variety of uses. The subtidal zone is predominantly bedrock with traces of rockweed, kelp, coralline algae, some unidentified red seaweed, sea lettuce, encrusting sponge, and a few periwinkles. The deeper subtidal bedrock contains some kelp, unidentified red seaweed, sea lettuce, trace coralline algae, and a few periwinkles. No eelgrass was observed in the project area.

To compensate for lost functions and values of the coastal wetland, the applicant proposes to make a contribution into the In-Lieu Fee (ILF) program of the Maine Natural Resource Conservation Program (MNRCP) in the amount of \$12,843. Prior to the start of construction, the applicant must submit a payment in the amount of \$12,843, payable

to “Treasurer, State of Maine”, and directed to the attention of the ILF Program Administrator at 17 State House Station, Augusta, Maine 04333.

The Department finds that the applicant has avoided and minimized coastal wetland impacts to the greatest extent practicable, and that the proposed project represents the least environmentally damaging alternative that meets the overall purpose of the project provided that, prior to project construction, the applicant submits the ILF payment as described above.

7. OTHER CONSIDERATIONS:

The Department did not identify any other issues involving existing scenic, aesthetic, or navigational uses, soil erosion, habitat or fisheries, the natural transfer of soil, natural flow of water, water quality, or flooding.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S.A. Sections 480-A et seq. and Section 401 of the Federal Water Pollution Control Act:

- A. The proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational, or navigational uses.
- B. The proposed activity will not cause unreasonable erosion of soil or sediment.
- C. The proposed activity will not unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.
- D. The proposed activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine, or marine fisheries or other aquatic life provided that, prior to construction, the applicant makes a contribution to the In-Lieu Fee (ILF) program as described in Finding 6.
- E. The proposed activity will not unreasonably interfere with the natural flow of any surface or subsurface waters.
- F. The proposed activity will not violate any state water quality law including those governing the classifications of the State's waters provided that all pressure-treated lumber is cured as described in Finding 5.
- G. The proposed activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.
- H. The proposed activity is not on or adjacent to a sand dune.

- I. The proposed activity is not on an outstanding river segment as noted in Title 38 M.R.S.A. Section 480-P.

THEREFORE, the Department APPROVES the above noted application of WOOD ISLAND LIFE SAVING STATION ASSOCIATION to alter coastal wetland and Significant Wildlife Habitat to construct a timber marine railway, repair and enlarge seawalls, and construct a pier, ramp and float as described herein, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations:

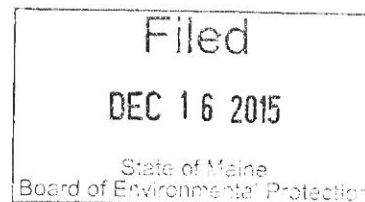
1. Standard Conditions of Approval, a copy attached.
2. The applicant shall take all necessary measures to ensure that its activities or those of its agents do not result in measurable erosion of soil on the site during the construction of the project covered by this approval.
3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.
4. All pressure-treated lumber shall be cured on dry land in a manner that exposes all surfaces to the air for 21 days prior to the start of construction.
5. Prior to the start of construction, the applicant shall submit a payment in the amount of \$12,843, payable to "Treasurer, State of Maine", and directed to the attention of the ILF Program Administrator at 17 State House Station, Augusta, Maine 04333.

THIS APPROVAL DOES NOT CONSTITUTE OR SUBSTITUTE FOR ANY OTHER REQUIRED STATE, FEDERAL OR LOCAL APPROVALS NOR DOES IT VERIFY COMPLIANCE WITH ANY APPLICABLE SHORELAND ZONING ORDINANCES.

DONE AND DATED IN AUGUSTA, MAINE, THIS 16TH DAY OF DECEMBER, 2015.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: *Avery T. Day*
For: Avery T. Day, Acting Commissioner



PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

CGW/L26596ANBNCN/ATS# 79959, 78820, 79957



DEPARTMENT OF THE ARMY
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS
696 VIRGINIA ROAD
CONCORD, MASSACHUSETTS 01742-2751

REPLY TO
ATTENTION OF

MAINE GENERAL PERMIT (GP)
AUTHORIZATION LETTER AND SCREENING SUMMARY

Wood Island Life Saving Station Association
P.O. Box 11
Kittery Point, Maine 03905

CORPS PERMIT # NAE-2015-00072 amendment
CORPS GP ID# 15-009 & 15-462
STATE ID# L-26596-4E-A-N

DESCRIPTION OF WORK:

Department of the Army permit NAE-2015-00072 authorized the placing fill in 1.254 SF (0.028 acres) of intertidal area in conjunction with repairing the existing seawalls with a new concrete face and cap including placing 330 CY's of rock fill behind the South Seawall and 720 CY's of rock fill behind the North Seawall to stabilize the seawalls and prevent future erosion. The work also includes reconstruction of the deteriorated 11.4' x 105' pile and timber marine railway in kind within the original footprint on Wood Island Kittery Point, Maine as shown on the attached plans entitled Seawall Repairs Wood Island Kittery, Maine, York County, Portsmouth Harbor by Waterfront Engineers LLC" in 7 sheets dated Sept 10, 2014. The permit is hereby amended to include **DESCRIPTION OF WORK CONTINUED**

LAT/LONG COORDINATES : 43.06361° N 70.69770° W USGS QUAD: ME-Kittery

I. CORPS DETERMINATION:

Based on our review of the information you provided, we have determined that your project will have only minimal individual and cumulative impacts on waters and wetlands of the United States. Your work is therefore authorized by the U.S. Army Corps of Engineers under the enclosed Federal Permit, the Maine General Permit (GP). Accordingly, we do not plan to take any further action on this project.

You must perform the activity authorized herein in compliance with all the terms and conditions of the GP [including any attached Additional Conditions and any conditions placed on the State 401 Water Quality Certification including any required mitigation]. Please review the enclosed GP carefully, including the GP conditions beginning on page 5, to familiarize yourself with its contents. You are responsible for complying with all of the GP requirements; therefore you should be certain that whoever does the work fully understands all of the conditions. You may wish to discuss the conditions of this authorization with your contractor to ensure the contractor can accomplish the work in a manner that conforms to all requirements.

If you change the plans or construction methods for work within our jurisdiction, please contact us immediately to discuss modification of this authorization. This office must approve any changes before you undertake them.

Condition 38 of the GP (page 16) provides one year for completion of work that has commenced or is under contract to commence prior to the expiration of the GP on October 13, 2020. You will need to apply for reauthorization for any work within Corps jurisdiction that is not completed by October 13, 2021.

This authorization presumes the work shown on your plans noted above is in waters of the U.S. Should you desire to appeal our jurisdiction, please submit a request for an approved jurisdictional determination in writing to the undersigned.

No work may be started unless and until all other required local, State and Federal licenses and permits have been obtained. **This includes but is not limited to a Flood Hazard Development Permit issued by the town if necessary.**

II. STATE ACTIONS: PENDING [☒], ISSUED [☐], DENIED [☐] DATE _____

APPLICATION TYPE: PBR: _____, TIER 1: _____, TIER 2: _____, TIER 3: ☒ LURC: _____ DMR LEASE: _____ NA: _____

III. FEDERAL ACTIONS:

JOINT PROCESSING MEETING: 12/17/2015 LEVEL OF REVIEW: CATEGORY 1: _____ CATEGORY 2: ☒

AUTHORITY (Based on a review of plans and/or State/Federal applications): SEC 10 ☒ 404 _____ 10/404 _____, 103 _____

EXCLUSIONS: The exclusionary criteria identified in the general permit do not apply to this project.

FEDERAL RESOURCE AGENCY OBJECTIONS: EPA NO, USF&WS NO, NMFS NO

If you have any questions on this matter, please contact my staff at 207-623-8367 at our Manchester, Maine Project Office. In order for us to better serve you, we would appreciate your completing our Customer Service Survey located at <http://per2.nwp.usace.army.mil/survey.html>

RODNEY A. HOWE
SENIOR PROJECT MANAGER
MAINE PROJECT OFFICE

FRANK J. DEL GIUDICE
CHIEF, PERMITS & ENFORCEMENT BRANCH
REGULATORY DIVISION
12-23-2015
DATE

REPORT TO THE KITTERY TOWN COUNCIL – WI AGREEMENT WORKING GROUP

RESPONSIBLE INDIVIDUAL: Beers/Reid

Date: July 11, 2016

SPONSOR: Beers

SUBJECT: Wood Island Concession Agreement Revision

BACKGROUND:

- Previous RTC & working group charge, Mar 15, 2016
- Previous RTC - Progress update, May 04, 2016
- Previous RTC - Progress update, May 13, 2016
- Previous RTC - Progress update, May 31, 2016

CURRENT SITUATION:

- Jan 25, 2016 Concession Agreement, as signed (*encl 1*); Proposed Agreement - final version (*encl 2*); NPS PM response (*encl 3*).
- Exhibits attached to Agreement as noted therein
- Notable revisions:
 - Converted to NPS model format and language (format conversion resulted in far too many changes for a comprehensible tracked view)
 - The Jan 25 signed agreement language moved to appropriate sections
 - Sequenced to after-the-fact of completion of repair agreement upon issue of occupancy certificate for Museum
 - Revised a number of terms/phrases, grammar/punctuation, etc., to more clearly express original agreement intent
 - Addressed and expanded “use” language to clarify intent more completely
 - Revised renewal, and termination clause features IAW NPS direction
 - Added SHPO for Notice
- Retained State-Town maintenance agreement obligation by WILSSA for the duration of that contract.

RECOMMENDATION: Deliberation and consideration for approval of Concession Agreement, as revised.

Enclosures

1. Jan 25, 2016 Wood Island Concession Agreement, signed
2. Concession Agreement Revision – Final - Proposed
3. NPS PM Response

Attachments (to Agreement)

1. Exhibit A - Wood Island Quitclaim Deed (plus unofficial retyped copy w/Utilization passages)
2. Exhibit B - Preservation Covenant - Signed
3. Exhibit C - Determination of Eligibility

CONCESSION AGREEMENT
Between
TOWN OF KITTERY, MAINE
and
WOOD ISLAND LIFE SAVING STATION ASSOCIATION

This Concession Agreement is made this 25th day of January, 2016 by and between the TOWN OF KITTERY, a municipal corporation of the State of Maine, with its office at Town Hall, 200 Rogers Road, Kittery ME, 03904, hereinafter referred to as the "TOWN", and the Wood Island Life Saving Station Association, a non-profit corporation with a mailing address at PO Box 11, Kittery Point, ME, 03905 hereinafter referred to as "WILSSA", collectively as the "PARTIES".

RECITALS

Whereas, the TOWN owns certain land totaling 1.25 acres, historic lifesaving STATION and appurtenances, obtained by the TOWN from the United States of America (hereinafter referred to as the "USA"), known as Wood Island Life Saving Station, hereinafter referred to as the "PREMISES", which was deeded to the TOWN on February 27, 1973, found in Book 1985 Page 201 of the York Registry of Deeds. A copy of the quitclaim deed is attached (Exhibit A, "Quitclaim Deed"); and

Whereas, the TOWN and WILSSA use the term STRUCTURES to mean hereinafter the STATION (main building), shed, marine railway, pier, floats, moorings, seawalls, and wreck pole; and

Whereas, Condition No. 1 of said deed sets forth that "the property shall be used and maintained for the public purposes for which it was conveyed in perpetuity as set forth in the program of utilization and plan contained in the application submitted by the Grantee on the 25th day of October, 1972 and amended the 27th day of November 1972, which program and plan may be further amended from time to time at the request of either the Grantor or Grantee with the written recommendation and advice of the other party, and such amendments shall be added to and become a part of the original application;" and

Whereas, such program of utilization referenced above includes a statement that "the island would be used by boaters in the Piscataqua River as a place to stop for cookouts, picnics, etc. In addition, depending on the condition of present buildings it would also be maintained as a point of interest or historic site;" and

Whereas, Condition No. 3 of said deed provides that "The property will not be sold, leased, assigned or otherwise dispose of except to another local Governmental agency..." "However, nothing in this provision shall preclude the Grantee from providing related recreational facilities and services compatible with the approved application, through concession agreements entered into with third parties, provided prior concurrence to such agreements is provided in writing by the Secretary of the Interior or delegated representative"; and

SSR
1/26/16

Whereas, the Secretary of the Interior must provide written concurrence to this CONCESSION AGREEMENT; and

Whereas, the PARTIES have entered into an agreement (Exhibit B, "Compromise agreement", dated January 19, 2016) for WILSSA to repair the STRUCTURES, maintain them and use them for the enjoyment of the public as a Maritime Museum; and

Whereas, the PARTIES desire to specify the conditions under which the PREMISES will be used for the enjoyment of the public as a park and Maritime Museum, and to allow WILSSA to raise funds for the expenses of the maintenance, repair, construction of the STRUCTURES and the costs of operating the Maritime Museum and other costs; and

Whereas, the primary purposes of the Maritime Museum established by WILSSA are the preservation of historical artifacts; the presentation of historical information; and, the offering of demonstrations and interactive exhibits of the maritime heritage of the Wood Island Life Saving Station; and

Whereas, the TOWN is satisfied that provision of additional services and facilities at the Wood Island Life Savings Station by WILSSA is in the TOWN's and the public's best interest.

NOW, THEREFORE, for the reasons set forth above, and in consideration of the mutual promises, covenants, and agreements, as hereinafter set forth, the TOWN agrees to allow WILSSA to establish, maintain and operate a Maritime Museum located on the Town's property at Wood Island in Kittery, Maine.

1. LOCATION:

The TOWN does hereby allow WILSSA the use of the Wood Island Life Saving Station and STRUCTURES which are part of the PREMISES described in Exhibit A. The surrounding PREMISES of Wood Island, totally 1.25 acres, may also be used by WILSSA for the purposes stated herein but must remain open for public recreational use at all times as described in Section 3. Use of the property is subject to the terms and conditions contained in the deed, attached as Exhibit A.

2. USE OF PREMISES:

The PARTIES agree that the PREMISES must be used as a Maritime Museum with access to the public and for public recreational purposes. All uses undertaken by WILSSA pursuant to this agreement must comply with local land use ordinances, as well all local, state, and federal permits and regulations. TOWN acknowledges that this CONCESSION AGREEMENT is exclusive to WILSSA and may not contract with any other individual or entity, including the Town, during the term of this AGREEMENT. This provision does not preclude WILSSA from contracting with professional service providers, or other vendors, to assist in operating the station such as charter boat operators to transport visitors to and from Wood Island.

SSR

1/26/16

The premises may be used only for the following purposes, programs and activities:

- a. A museum will occupy the first floor, the observation tower and portions of the property, depicting the history of Wood Island, specifically the roles of the US Life Saving Service from 1908 to 1915; the US Coast Guard from 1916 to 1941 and 1945 to 1948; and, the US Navy from 1941 to 1945.
- b. Demonstrations of life saving operations, displays of life saving equipment and implements and demonstrations of their use, methods and types of life saving and lifesaving architecture nationwide and interior furnishings that replicate what life was like in the STATION for the men that served there.
- c. Fund raising and income creating activities and programs for the benefit of the Museum. Fees charged for admission to the Museum will be reasonably nondiscriminatory and comparable to fees charged at similar facilities in the area. The Museum may be open seasonally to the public for such periods (months, days and hours) as determined in the sole discretion of WILSSA, but is intended to be open from June 1st through August 31st of any year covered by this agreement.
- d. Office and lodging space to support the Museum may be provided on the second floor with limited public access. The tower is intended to be accessible to the public as much as is safe and practical. The basement is to be used for mechanical and service functions and may have no public access. The shed is expected to offer a handicapped accessible bathroom and storage space for a generator.
- e. All other programs, activities and events related to or in furtherance of the purposes of the Museum.

3. Free Public Access for Recreation:

Nothing in this AGREEMENT may restrict the public's access to Wood Island itself for recreational purposes year round, even when the Museum is not in operation and/or during off season with the exception of areas inside designated construction sites or the Museum. No fee will be charged for public recreational use of the PREMISES except as described in Section 21.

4. TERM:

This AGREEMENT shall be effective from the date the certificate of occupancy is issued for an initial term of twenty (20) years.

5. RENEWAL

WILSSA has the exclusive option of extending this agreement for 1 additional twenty (20) year period.

WILSSA shall mail notice to the Town of its intent to exercise its option to renew the agreement ninety (90) days prior to expiration.

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1/26/16

6. RENT AND FEES:

WILSSA shall pay no rent for the use of the STATION or STRUCTURES. In addition, no other costs or fees or taxes of any kind may be levied upon WILSSA for its use of the PREMISES including, but not limited to, real estate property taxes or special assessments. This is not intended to include any sales or income taxes or fees that may be required pursuant to State or Federal law.

7. UTILITIES:

WILSSA is solely responsible for the design, construction and payment of costs associated with the operation of any utility or security services on the premises.

8. NO RIGHT TO ASSIGN OR SUBLET:

WILSSA agrees not to assign or sublet any part of the premises without a majority vote of the full Town Council approval following a public hearing and affirmed by the National Park Service to the extent it is required. This provision does not preclude WILSSA from contracting with professional service providers or other vendors to assist in operating the station such as charter boat operators to transport visitors to and from Wood Island.

9. MAINTENANCE OF STRUCTURES:

During and throughout the term of this agreement, WILSSA shall, at its own expense and at no cost or expense to the TOWN, maintain the STRUCTURES in a safe and orderly manner. A 20-year Preservation Agreement describing maintenance and related conditions for the exterior of the STATION (Exhibit C, "Preservation Agreement") has been approved by the designee of the National Park Service and entered into by TOWN as Grantor and the State of Maine as Grantee. That Agreement allows for TOWN to seek other parties to pay for the maintenance costs of the STATION exterior. WILSSA shall maintain the exterior of the STATION in accordance with that Agreement on behalf of the TOWN.

10. RESTRICTIONS ON USE AND ACTIVITIES:

During and throughout the term of this AGREEMENT, the use, occupancy and activity of WILSSA, all persons holding by or through WILSSA and all persons who come upon the premises with the consent of the WILSSA are restricted as follows:

- a. Permitted use. No part of the PREMISES may be used for any purpose other than as described in this CONCESSION AGREEMENT.
- b. Hazardous use. No part of the PREMISES may be used or occupied for any purpose that is extra hazardous on account of fire, explosion, or toxic or radioactive emission or contamination.
- c. Environmental protection. All activities on the PREMISES and all uses to which any part of the PREMISES is put must comply in all material respects with Federal, State and local environmental protection statutes, laws, rules and regulations, subject to WILSSA's right to contest the applicability thereof, during which contest WILSSA may not be deemed in non-compliance. WILSSA must not discharge, nor permit or suffer to be discharged, on or into the ground any substance that may endanger or pollute the groundwater supply in any material respect.

SSR
1/26/16

WILSSA shall promptly execute and comply in all material respects with all statutes, ordinances, rules, orders, regulations and requirements of the Federal, State, and Local governments having jurisdiction over said premises for the correction, prevention, and abatement of pollution and use of the premises during the term of this Agreement and any renewal thereof.

d. Historic Property: The subject property is deemed to be historic (Exhibit D, "Determination of Eligibility") and WILSSA will adequately ensure the preservation of the historic property per the 20 year Preservation Agreement entered into by TOWN as Grantor and the State of Maine as Grantee to maintain the exterior of the building.

Also in accordance with that Preservation Agreement, any proposed construction, alteration, remodeling, changes of color or surfacing or any other change that would affect the structural integrity, appearance, cultural use, or archeological value of the property requires express prior written approval of the State of Maine through the Director of the Maine Historic Preservation Commission and will be in compliance with the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Structures. WILSSA must submit any proposed changes to the property to the TOWN simultaneously to its submittal for approval to the Director of the Maine Historic Preservation Commission.

11. INSPECTION:

The National Park Service, and the State Historic Preservation Officer, and their duly authorized representatives have the right to enter into and upon the STATION at a reasonable hour for the purpose of inspection for compliance upon reasonable advance notice to WILSSA. The TOWN's Code Enforcement Officer and the Town's public safety personnel, including Fire and Police, have the right to enter into the STATION at any time to perform inspections or undertake any activities within their respective functions and jurisdictions.

12. SURRENDER.

At the expiration of the initial term or subsequent renewal term of this AGREEMENT, WILSSA shall surrender the STATION to TOWN with all buildings, structures, and other improvements thereon.

13. MOVABLE STRUCTURES.

Machines, trade fixtures and similar installations which are installed in any building, structure, or other improvement on the premises are not deemed to be part of the realty even though such installations are attached to the floors, walls, or roof of any building or structure or to outside pavements, so long as such installation can be removed without structural damage to any building, structure, or other improvement on the premises; provided, however, that if the removal of any such installation damages any part of the building, structure, other improvement, pavements or premises, WILSSA shall repair such damage and restore said building, structure, other improvement, pavements or premises to the same condition as originally existed upon the issuance of a certificate of occupancy, ordinary and usual wear and tear excepted.

14. PERSONAL PROPERTY.

Any and all personal property of every kind and nature whatsoever, whether or not attached to or installed in any building, structure, or other improvement which WILSSA places in, upon, or about the premises during the term hereof may be removed there from prior the expiration of the term of this agreement and remain the personal property of WILSSA.

15. INSURANCE.

WILSSA shall at its sole expense during the term of this agreement maintain insurance per the specifications and minimum limits set forth herein.

a. Commercial General Liability on an occurrence, as opposed to claims made, basis with general aggregate limit applicable per project and per location.

Each occurrence limit:	\$1,000,000.00
General aggregate limit:	\$2,000,000.00
Products/Completed operations aggregate limit:	\$2,000,000.00

b. An additional insured provision is to apply to the TOWN and its respective officers, officials, agents, and employees on a primary, non-contributory basis.

c. Automobile liability for owned, hired, and non-owned autos with combined single limit each accident of \$1,000,000. An additional insured, or designated insured, provision is to apply to the TOWN and its respective officers, officials, agents, and employees.

d. If there are any employees, workers' compensation insurance to comply with the requirements of Maine statute, plus employers' liability for:

Each Accident:	\$100,000.00
Each Employee (disease):	\$100,000.00
Policy Limit (disease):	\$500,000.00

f. If required by Federal Statute, coverage to comply with the Longshore and Harbor Workers' Compensation Act (33 USC Sections 901-950) and/or Merchant Marine Act, 1920 (46 USC Section 688) commonly referenced as the "Jones Act".

g. All policies required by this AGREEMENT are to be provided by a company, or companies, admitted to conduct business in the STATE OF MAINE. All policies shall be so written that the Kittery Town Manager will be notified of cancellation at least ten (10) days prior to the effective date of such cancellation. A certificate of insurance from WILSSA's insurance carrier showing at least the coverage and limits of liability specified above and the inception and expiration dates shall be filed with the Town Manager at least seven (7) calendar days before operations are begun.

h. WILSSA agrees to require that any written Agreements between WILSSA and any of its service or material provider(s) will require the same provisions, coverages, and limits as in this Article 15. WILSSA shall obtain an endorsement to its Commercial General Liability policy to cover WILSSA's obligations under this Article.

OTHER TERMS AND CONDITIONS

16. INDEMNITY AND LIMITATION OF LIABILITY

1. WILLSA hereby agrees to indemnify, defend and hold harmless the TOWN and its respective officers, officials, agents, employees, members of boards and committees, with respect to the equipment, work and materials that WILLSA or its subcontractors, employees, agents or representatives have agreed to perform and supply under this AGREEMENT from and against all expenses, losses and claims, demands, payments, suits, actions, liabilities, recoveries, and judgments of any nature and description, other than as a result of the sole negligence of the TOWN, including reasonable attorney's fees, resulting from claims arising out of or related to any act or omission of WILLSA, its agents, employees, contractors, representatives for service or materials provided, in the work and materials that WILLSA has agreed to perform and supply under this AGREEMENT. This obligation to indemnify, defend and hold harmless does not waive any defense, immunity or limitation of liability which may be available to the TOWN, its officers, agents, or employees under the Maine Tort Claims Act pursuant to 14 M.R.S. §8101 et. seq.
2. In the event of the commencement of any action against the TOWN, or its respective officers, officials, agents, employees, or members of boards and committees which is within the scope of this indemnification, the TOWN will give notice thereof to WILLSA within fifteen business days after the TOWN is formally noticed in any such action, and, after consultation with TOWN, WILLSA will have the right to select and furnish counsel for the defense of any such action, at no cost or expense to the TOWN.
3. The TOWN'S failure to give timely notice to WILLSA of the commencement of any such action does not relieve WILLSA of its obligations under this section unless such failure to give timely notice causes actual prejudice to WILLSA's ability to defend any such claim. Except for settlements involving only the payment of money, no settlement which creates an obligation for the TOWN of any such action, or any claim therein, may be made by WILLSA or by counsel selected by WILLSA, without the approval of the TOWN, which approval may not be unreasonably withheld.
4. The extent of WILLSA's indemnification and hold harmless is not limited by the requirements for liability insurance under this Agreement.
5. The provisions of this Article survive the termination of this AGREEMENT.

17. FORCE MAJEURE

WILSSA is not liable for any loss or damage due to failure or delay in performance under this AGREEMENT resulting from any unusual or unavoidable cause beyond WILSSA's reasonable control including, but not limited to: acts of God; acts or omissions of civil or military authority; fires; floods; epidemics; quarantine restrictions; unusually severe weather; strikes or other labor disputes; embargoes; wars; political strife; riots; sabotage; or unusual delay in transportation.

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18. WAIVER:

Failure of either party to complain of any act or omission on the part of the other party, no matter how long the same may continue, is not deemed to be a waiver by said party of any of said party's rights hereunder. No waiver by either party at any time, expressed or implied, of any breach of any provision of this AGREEMENT may be deemed a waiver of breach of any other provision of this AGREEMENT or a consent to any subsequent breach of the same or any other provision. If any action by either party requires the consent and approval of the other party, the other party's consent to or approval of such action on any one occasion may not be deemed to be a consent to or approval of said action on any subsequent occasion. Any and all rights and remedies which either party may have under this agreement, upon any breach, are distinct, separate and cumulative and not be deemed inconsistent with each other; and no one of them, whether exercised by said party or not, may be deemed to be an exclusion of any other.

19. NON-DISCRIMINATION:

Within the 20 year Preservation Agreement entered into by TOWN as Grantor and the State of Maine as Grantee to maintain the exterior of the building, the TOWN agreed to comply with certain State and Federal laws relating to nondiscrimination on the basis of race, religion, national origin or disability. WILSSA shall comply with those same terms and conditions.

20. ACKNOWLEDGEMENT:

This AGREEMENT and the obligations of the parties hereto are subject to the terms and conditions set forth in the Deed from the USA to the TOWN, dated the 27th day of February, 1973, and recorded at York County Registry of Deeds/Clerks Office at Book 1985, page 201, and the current Program of Utilization which governs the use of the PREMISES.

21. RETENTION OF EARNINGS:

WILSSA may retain any and all income from any fees or any other income from any activities authorized to be conducted by WILSSA pursuant to the terms of this AGREEMENT. Those activities and their fees include, but are not limited to, admissions fees, rental fees, docking and mooring fees, membership fees, merchandise sales, food and beverage sales, lodging fees and royalties. The scheduling and marketing of such authorized activities are at the sole discretion of WILSSA. The values of all such fees and costs, which may be set from time to time at the sole discretion of WILSSA, are to be retained in full by WILSSA for the benefit of STATION and its Purpose, Use and Maintenance. However, fees charged for admission to the Museum will be reasonably nondiscriminatory and comparable to fees charged at similar facilities in the area.

22. TERMINATION

A. TOWN may terminate this AGREEMENT if WILSSA:

- 1) Is in substantial breach of a provision of this AGREEMENT.
- 2) If WILSSA ceases to be an active, functioning nonprofit corporation registered to do business under the laws of the STATE of MAINE.

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When any of the above conditions exist, TOWN may, without prejudice to any other rights or remedies of TOWN and after giving WILSSA thirty days written notice to remedy above condition and the condition has not been remedied, terminate this AGREEMENT:

B. WILSSA may terminate this AGREEMENT if TOWN:

1) Is in substantial breach of a provision of this AGREEMENT document.

If the above conditions exist, WILSSA may, without prejudice to any other remedies or WILSSA and after giving the TOWN thirty (30) days written notice to remedy the above condition and the condition has not been remedied, terminate the AGREEMENT without penalty.

23. NOTICE:

Whenever notice is required to be given under the terms of this License, such notice must be in writing and either hand delivered or mailed by certified mail, return receipt requested:

If to the WILSSA, to:

Wood Island Life Saving Station Assoc.

PO Box 11

Kittery Pt, ME 03905

If to TOWN, to:

Town Manager

Town of Kittery

200 Rogers Road

Kittery, ME 03904

or to such other addresses as WILSSA or TOWN designate for themselves in the same manner.

24. AMENDMENT TO CONCESSION AGREEMENT:

This CONCESSION AGREEMENT contains all the terms and conditions between the parties, and no alteration, amendment, or addition is valid unless in writing and signed by WILSSA and a majority vote of the full Kittery Town Council. If an amendment is made, written concurrence by the Secretary of the Interior or designee is required in compliance and accordance with the TOWN's Deed from the Department of the Interior.

25. OTHER ITEMS:

The terms of the Repair, Maintenance and Use Agreement (Exhibit B, "Compromise Agreement", dated January 19, 2016), remain in effect throughout the duration of this CONCESSION AGREEMENT or any renewal term.

26. GOVERNING LAW

This AGREEMENT is governed and interpreted by Maine law.

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27. SEVERABILITY OF PROVISIONS

If any provision or any portion thereof contained in this AGREEMENT is held unconstitutional, invalid or unenforceable by a court of jurisdiction, the remainder of this AGREEMENT shall be deemed severable, shall not be affected, and shall remain in full force and effect.

28. CAPTIONS:

The captions to the paragraphs herein are for convenience only and are not to be deemed inclusive; the Concession Agreement must be interpreted based upon its entire context.

IN WITNESS WHEREOF, the parties have set their hands and seals or caused this agreement to be signed by their properly authorized corporate officers and caused their corporate seals to be hereunto affixed this 25 day of January, 2016.

TOWN, by: Mary A. Puff per Town Council vote of 1/25/16 "contingent" upon NPS
Nancy Gilbert Puff, Town Manager written concurrence
[Name] [Title] [Address] [Town, State, Zip Code]

WITNESS: Chloe O'Connell

WILSSA, by: Paul J. P.O.
President. PO Box 11 Kith, Pt ME 03905
[Name] [Title] [Address] [Town, State, Zip Code]

WITNESS: Haer Ester

EXHIBIT A: Quitclaim Deed

EXHIBIT B: Repair, Maintenance, and Use Agreement (Compromise Agreement)

EXHIBIT C: Preservation Agreement

EXHIBIT D: Determination of Eligibility

CONCESSION AGREEMENT

between the

TOWN OF KITTERY, MAINE

and the

WOOD ISLAND LIFE SAVING STATION ASSOCIATION

This Concession Agreement (the AGREEMENT) is made this _____ day of _____, 2016 by and between the Town of Kittery, a municipal corporation of the State of Maine, with its office at Town Hall, 200 Rogers Road, Kittery ME, 03904, hereinafter referred to as "TOWN", and the Wood Island Life Saving Station Association, a non-profit corporation with a mailing address at PO Box 11, Kittery Point, ME, 03905, hereinafter referred to as "WILSSA", collectively as the "PARTIES".

RECITALS

Whereas, the TOWN owns certain land totaling approximately 1.25 acres with an historic lifesaving station and appurtenances thereon, known as Wood Island Life Saving Station, obtained by the TOWN from the United States of America (hereinafter referred to as the "USA"), as surplus property, hereinafter referred to as the "PREMISES", and deeded to the TOWN on February 27, 1973. Said quitclaim deed is found in Book 1985, Page 201, of the York County Registry of Deeds a copy of which is attached hereto and incorporated herein by this reference, and hereinafter referred to as Exhibit A; and

Whereas, the TOWN and WILSSA desire to provide a Marine Museum facility and related services as described in Section 2 of this AGREEMENT on a portion of Wood Island for the use and benefit of the general public; and

Whereas, the TOWN and WILSSA use the term STRUCTURES to mean hereinafter the STATION (main building), shed, marine railway, pier, floats, moorings, seawalls, and wreck pole; and

Whereas, the PARTIES will have abated hazardous materials on the property; restored the main building exterior; and repaired/constructed STRUCTURES as reflected in a separate “REPAIR and MAINTENANCE AGREEMENT”, acknowledged herewith as successfully accomplished as of issue of a certificate of occupancy by the TOWN for the STATION; and, intend to maintain them and use them for the enjoyment of the public as a Maritime Museum; and

Whereas, a covenant of said deed (Condition No. 1) sets forth that “the property shall be used and maintained for the public purposes for which it was conveyed in perpetuity as set forth in the program of utilization and plan contained in the application submitted by the Grantee (TOWN) on the 25th day of October 1972, and amended the 27th day of November 1972, which program and plan may be further amended from time to time at the request of either the Grantor (USA) or Grantee with the written recommendation and advice of the other party, and such amendments shall be added to and become a part of the original application;” and

Whereas, such program of utilization referenced above includes a statement that “the island would be used by boaters in the Piscataqua River as a place to stop for cookouts, picnics, etc. In addition, depending on the condition of present buildings it would also be maintained as a point of interest or historic site:” and

Whereas, the PARTIES desire to specify the conditions under which the PREMISES will be used for the enjoyment of the public as a park and Maritime Museum, and to allow WILSSA to raise funds for the expenses of the maintenance, repair, operation of the STRUCTURES and the costs of operating the Maritime Museum and other costs; and

43 **Whereas**, the primary purposes of the Maritime Museum established by WILSSA are the preservation of
44 historical artifacts; the presentation of historical information; and, the offering of demonstrations and
45 interactive exhibits of the maritime heritage of the Wood Island Life Saving Station to the public; and

46 **Whereas**, the TOWN is satisfied that provision of additional services and facilities at the Wood Island
47 Life Savings Station by WILSSA is in the TOWN's and the public's best interest; and

48 **Whereas**, a covenant of the deed (Condition No. 3) states "The property shall not be sold, leased,
49 assigned, or otherwise disposed of except to another eligible governmental agency that the Secretary of
50 the Interior agrees in writing can assure the continued use and maintenance of the property for public park
51 or public recreation purposes subject to the same terms and conditions in the original instrument of
52 conveyance. However, nothing in this provision shall preclude the Grantee (TOWN) from providing
53 related recreational facilities and services compatible with the approved application, through concession
54 agreements entered into with third parties, provided prior concurrence to such agreement is obtained in
55 writing from the Secretary of the Interior"; and

56 **Whereas**, the National Park Service Federal Lands to Parks Program is the designated representative of
57 the Secretary of the Interior for the approval of this concession agreement.

58 **NOW, THEREFORE**, for the reasons set forth above, and in consideration of the mutual promises,
59 covenants, and agreements, as hereinafter set forth, the TOWN agrees to allow WILSSA to provide a
60 Maritime Museum, services and facilities, hereinafter to be mentioned, upon a portion of the real property
61 described in Exhibit A, and located on the TOWN's property at Wood Island in Kittery, Maine. Such
62 Maritime Museum open to the public as stipulated below.

63 **1. Location:**

64 The TOWN does hereby agree to allow WILSSA the use of the Wood Island Life Saving Station and
65 STRUCTURES which are a portion of the property described in Exhibit A. The remaining PREMISES of
66 Wood Island may also be used by WILSSA for the purposes stated herein, but must remain open for
67 public recreational use at all times at no cost as described, following.

68 **2. Use of Premises:**

69 WILSSA shall use, occupy, and maintain, the portions of PREMISES herein identified in a businesslike,
70 careful, clean and non-hazardous manner for the sole purpose of a Maritime Museum in strict accordance
71 with all terms and provisions imposed by the Department of the Interior as set forth in Exhibit A. Written
72 approval by the TOWN and written concurrence by the Secretary of the Interior or delegated
73 representative, National Park Service, is required for other proposed use, in conjunction with, or in
74 addition to, those specified herein.

75 **A. Use Compliance:**

76 All uses undertaken by WILSSA pursuant to this AGREEMENT must comply with local land use
77 ordinances, as well all local, state, and federal permits and regulations. WILSSA shall promptly execute
78 and comply in all material respects with all statutes, ordinances, rules, orders, regulations and
79 requirements of the federal, state, and local governments having jurisdiction over said PREMISES for the
80 correction, prevention, and abatement of pollution and use of the PREMISES during the term of this
81 AGREEMENT and any renewal thereof.

82 **B. Right of Use:**

83 The TOWN acknowledges that this AGREEMENT is exclusive to WILSSA and may not contract with
84 any other individual or entity, including the Town, for any purpose contained herein, during the term of
85 this AGREEMENT.

C. Free Public Access for Recreation:

The PARTIES agree that the PREMISES must be used as a Maritime Museum with access to the public and for recreational purposes. Nothing in this AGREEMENT may restrict the public's access to Wood Island itself for recreational purposes year round, even when the Museum is not in operation and/or during off-season with the exception of areas inside designated construction sites or the Museum. No fee will be charged for public recreational use of the PREMISES except as described in Section 6, below.

D. Use Purposes, Programs and Activities:

WILSSA may use the PREMISES only for the following:

1. A museum will occupy the first floor, the observation tower and portions of the property, depicting the history of Wood Island, specifically the roles of the US Life Saving Service from 1908 to 1915; the US Coast Guard from 1916 to 1941 and 1945 to 1948; and, the US Navy from 1941 to 1945.
2. Demonstrations of lifesaving operations; displays of lifesaving equipment and implements and demonstrations of their use, methods and types of lifesaving and lifesaving architecture nationwide; and, interior furnishings that replicate what life was like in the STATION for the surfmen who served there.
3. A docents program will be designed and operated by WILSSA for individuals to stay at the STATION and provide support services such as security for the Museum or work to sell merchandise or food / beverages, undertake routine cleaning and maintenance of the PREMISES, open and close the STATION or pier, collect rental or admissions fees or docking / mooring fees, or attend orientation programs to be able to provide a variety of high quality information on the historic STATION for the enjoyment of the visiting public.
4. Space to support the Museum for ancillary use may be provided on the second floor with limited public access. The tower is intended to be accessible to the public as much as is safe and practical. The basement is to be used for mechanical and service functions and may have no public access. The shed is expected to offer a handicapped accessible bathroom and storage space for a generator.
5. The pier will provide public access to Wood Island, subject to the terms of this agreement such as is found at Section 6. Limitations on tie-up times will allow access for more vessels to the Island. The ability to close and lock the pier when the Museum is not open will provide for additional security.
6. Mooring(s) will be available to the public subject to the terms of this agreement.
7. The marine railway will be available for public demonstrations of launching and retrieving rescue craft, displaying of boats, and for storage of floats when the Museum is not open. Below the high tide area is expected to be slippery and unsafe and will be closed to the public.
8. Seawalls will be used to protect the PREMISES from high tides and storms. The area immediately behind the seawalls may contain underground tanks to be used as part of utility systems. The public will be warned to stay off of the seawalls for safety sake because of their height.
9. Other programs, activities, and events, related to, or in furtherance of, the purposes of the Museum consistent with the provisions of this AGREEMENT.

E. Restrictions on Use and Activities:

During and throughout the term of this AGREEMENT, the use, occupancy, and activities, of WILSSA, all persons holding by or through WILSSA; and, all persons who come upon the PREMISES with the consent of the WILSSA, are restricted as follows:

1. Permitted use. No part of the PREMISES may be used for any purpose other than as described in this AGREEMENT.

2. Hazardous use. No part of the PREMISES may be used or occupied for any purpose that may constitute hazardous exposure to fire, explosion, or toxic or radioactive emission or contamination.

F. Environmental Protection:

All activities on the PREMISES and all uses to which any part of the PREMISES is put by WILSSA, must comply in all material respects with federal, state and local environmental protection statutes, laws, rules and regulations, subject to WILSSA's right to contest the applicability thereof, during which contest WILSSA may not be deemed in non-compliance. WILSSA must not discharge, nor permit or suffer to be discharged, on or into the ground any substance that may endanger or pollute the groundwater supply in any material respect.

3. Personal Property:

No personal property is provided by the TOWN for this AGREEMENT. Any and all personal property of every kind and nature whatsoever, whether or not attached to or installed in any building, structure, or other improvement which WILSSA places in, upon, or about the PREMISES during the term hereof may be removed therefrom in accordance with Section 14 below, prior to the expiration of the term of this AGREEMENT and remain the personal property of WILSSA.

4. Term:

This AGREEMENT is effective from the date a certificate of occupancy for use of the STATION for an initial term of twenty (20) years, thence forward, is issued to WILSSA by the TOWN, which is to be attached hereto and incorporated by this reference; or the expiration of the National Maritime Heritage Grant Program Preservation Agreement, 08/10/15 (Exhibit B), whichever is sooner.

5. Renewal:

WILSSA has an option to renew this AGREEMENT for four (4) five-year (5-yr) terms upon conditions to be mutually agreed upon at that time. Should conditions be otherwise unchanged, the renewal is automatic upon WILSSA's notice to the Town of its intent to exercise its option to renew the AGREEMENT ninety (90) days prior to expiration. Any AGREEMENT reached by the TOWN and WILSSA for renewal of this AGREEMENT is subject to the written approval of the Secretary of the Interior or delegated representative, National Park Service, if any significant changes to the AGREEMENT are included.

6. Concession payments:

A. Rent and Fees:

WILSSA shall pay no rent for the use of the PREMISES. In addition, no other costs or fees or taxes of any kind may be levied upon WILSSA by the TOWN for its use of the PREMISES, including, but not limited to, real estate property taxes or special assessments. This is not intended to include any sales or income taxes or fees that may be required pursuant to state or federal law.

B. Retention of Earnings:

WILSSA may retain any and all income from any fees or any other income from any activities conducted by WILSSA pursuant to the terms of this AGREEMENT. Those fees and income include, but are not limited to, admission fees, docent fees, rental fees, docking/mooring fees, merchandise sales, ancillary food and beverage sales, and royalties. Which fees may be set from time to time by WILSSA, with concurrence by the Town Manager that such are reasonably nondiscriminatory and comparable to fees charged at similar facilities in the area.

7. WILSSA's Records and Documents:

With respect to all matters covered by this AGREEMENT, WILSSA's records and documents are subject at all times to inspection review or audit by the TOWN. WILSSA will supply the TOWN any documentation that may be needed by the TOWN to file required compliance reports to the Secretary of the Interior or delegated representative, National Park Service.

8. Operations and Maintenance:

The STRUCTURES, being primarily supported by volunteers, may be open seasonally to the public for such periods (months, days and hours) as determined in the sole discretion of WILSSA, but are intended to be open from Memorial Day through Labor Day of any year covered by this AGREEMENT. The terms of the 20-year Preservation Agreement (Exhibit B), continue in effect throughout the duration of this AGREEMENT and any renewal term as may be reflected therein, except as it may expire. In the event WILSSA ceases to operate the Maritime Museum, WILSSA shall continue to maintain the lifesaving structure, in the manner described in the preservation agreement, solely at WILSSA expense. The TOWN incurs no obligation for any financial support to operations and maintenance of the Maritime Museum, its appurtenances, or activities.

9. Licenses and Permits:

All necessary licenses and permits to operate this concession must be obtained from the appropriate offices before operation may begin. All licenses are subject to Code of Enforcement for safety, health and fire inspections.

10. Operating Expenses and Utilities:

WILSSA is responsible for the payment of utilities, as well as the costs associated with installation/upgrade of systems that are required by building codes and local ordinances relating to safety, health and fire. These systems must meet all local, state, and federal requirements.

11. Non-discrimination:

The TOWN and WILSSA agree to comply with all Federal and State laws relating to nondiscrimination in connection with any use, operation, program, or activity on or related to the previously described property, including, but not limited to:

- All requirements imposed by or pursuant to the non-discrimination regulations of the U.S. Department of the Interior (43 C.F.R. Part 17);
- Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d-1), which prohibits discrimination on the basis of race, color, or national origin;
- The Age Discrimination Act of 1975, as amended (42 U.S.C. §6101 et seq.), which prohibits discrimination on the basis of age;
- Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicap;

- The Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151), which requires facilities located on the property to be accessible to the physically handicapped; and
- The Americans with Disabilities Act of 1990 (42 U.S.C. 12181), which requires that no otherwise qualified handicapped individual shall, solely by reason of his or her handicap, be excluded from the participation in, be denied benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.

12. Historic Property Provisions:

The subject property is deemed to be historic (Exhibit C, "Determination of Eligibility") and WILSSA will adequately ensure the preservation of the historic property per the 20-year Preservation Agreement (Exhibit B) entered into by TOWN as Grantor and the State of Maine as Grantee to maintain the exterior of the building.

Also in accordance with that Preservation Agreement, any proposed construction, alteration, remodeling, changes of color or surfacing or any other change that would affect the structural integrity, appearance, cultural use, or archeological value of the property requires express prior written approval of the State of Maine through the Director of the Maine Historic Preservation Commission; and, will be in compliance with the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Structures. WILSSA must submit any proposed changes to the property to the TOWN simultaneously to its submittal for approval to the Director of the Maine Historic Preservation Commission.

13. Alterations and Improvements:

WILSSA may not make alterations or improvements to the PREMISES without written consent of the cognizant entity representing the TOWN (e.g. Code Enforcement Office; Port Authority, Planning Board) in accordance with local ordinance. Such written consent will not be unreasonably withheld or delayed.

If structural changes are required, WILSSA shall arrange for and supervise all necessary construction work and be responsible for all costs associated with providing the changes. All construction work must comply with the Historic Properties section of this AGREEMENT.

14. Disposition of Real-Personal Property:

Ownership and disposition of all real property on the PREMISES reside with the TOWN, subject to the provisions of Section 23, below. WILSSA acknowledges that the STRUCTURES and property are subject to the possibility of reversion with improvements without compensation by the USA should there be a material breach of noncompliance by the TOWN or WILSSA for not adhering to covenants and agreements contained within Exhibit A.

Any and all personal property of every kind and nature whatsoever, whether or not attached to or installed in any building, structure, or other improvement which WILSSA places in, upon, or about the PREMISES during the term hereof may be removed therefrom prior to the expiration of the term of this AGREEMENT and remain the personal property of WILSSA.

Machines, trade fixtures, and similar installations, which are installed in any building, structure, or other improvement on the PREMISES, are not deemed to be part of the realty even though such installations are attached to the floors, walls, or roof, of any building or structure or to outside pavements, so long as such installation can be removed without structural damage to any building, structure, or other improvement on the PREMISES; provided, however, that if the removal of any such installation damages any part of the building, structure, other improvement, pavements or PREMISES, WILSSA shall repair such damage and restore said building, structure, other improvement, pavements or PREMISES to the same condition as originally existed upon the issuance of a certificate of occupancy, ordinary and usual wear and tear excepted.

15. Maintenance and Repair:

During and throughout the term of this AGREEMENT, WILSSA shall, at its sole cost and expense, and at no cost or expense to the TOWN, maintain the STRUCTURES in good condition. A 20-year Preservation Agreement describing maintenance and related conditions for the exterior of the STATION (Exhibit B) as approved by the National Park Service and entered into by TOWN as Grantor and the State of Maine as Grantee, allows for TOWN to seek other parties to pay for the maintenance costs of the STATION exterior. WILSSA shall maintain the exterior of the STATION in accordance with that agreement on behalf of the TOWN. WILSSA must perform such repairs that become necessary from time to time during the term of this AGREEMENT and any renewals hereof as set forth herein

16. Inspection of Concession Areas:

WILSSA shall allow public safety officials representing the TOWN; the Secretary of the Interior's designated representative, National Park Service; and/or, the Maine State Historic Preservation Officer, or duly authorized representatives, at any and all reasonable times to inspect any facility operated under this AGREEMENT.

17. Indemnity and Liability:

A. Indemnity.

1. WILSSA hereby expressly agrees to indemnify, save, and hold harmless, the TOWN and its respective officers, officials, agents, employees, members of boards and committees, with respect to the equipment, work and materials that WILSSA or its subcontractors, employees, agents or representatives have agreed to perform and supply under this AGREEMENT from and against all expenses, losses and claims, demands, payments, suits, actions, liabilities, recoveries, and judgments of any nature and description, other than as a result of the sole negligence of the TOWN, including reasonable attorney's fees, resulting from claims arising out of or related to any act or omission of WILSSA, its agents, employees, contractors, representatives for service or materials provided, in the work and materials that WILSSA has agreed to perform and supply under this AGREEMENT. This obligation to indemnify, defend and hold harmless does not waive any defense, immunity or limitation of liability which may be available to the TOWN, its officers, agents, or employees under the Maine Tort Claims Act pursuant to 14 M.R.S. §8101 et. seq.

2. In the event of the commencement of any action against the TOWN, or its respective officers, officials, agents, employees, or members of boards and committees which is within the scope of this indemnification, the TOWN will give notice thereof to WILSSA within fifteen business days after the TOWN is formally noticed in any such action, and, after consultation with TOWN, WILSSA will have the right to select and furnish counsel for the defense of any such action, at no cost or expense to the TOWN.

3. The TOWN'S failure to give timely notice to WILSSA of the commencement of any such action does not relieve WILSSA of its obligations under this section unless such failure to give timely notice causes actual prejudice to WILSSA's ability to defend any such claim. Except for settlements involving only the payment of money, no settlement which creates an obligation for the TOWN of any such action, or any claim therein, may be made by WILSSA or by counsel selected by WILSSA, without the approval of the TOWN, which approval may not be unreasonably withheld.

4. The extent of WILSSA's indemnification and hold harmless is not limited by the requirements for liability insurance under this Agreement.

5. The provisions of this Article survive the termination of this AGREEMENT.

B. Force Majeure

WILSSA is not liable for any loss or damage due to failure or delay in performance under this AGREEMENT resulting from any unusual or unavoidable cause beyond WILSSA's reasonable control including, but not limited to: acts of God; acts or omissions of civil or military authority; fires; floods; epidemics; quarantine restrictions; unusually severe weather; strikes or other labor disputes; embargoes; wars; political strife; riots; sabotage; or unusual delay in transportation.

18. Insurance:

WILSSA shall, at its own expense, provide such public liability insurance that will protect WILSSA and the TOWN from all claims for damages to property and persons, including death, and particularly the use of products prepared, and/or sold, which may arise in the operation of the activities conducted under this Agreement or anyone directly or indirectly employed by WILSSA. During the term of this AGREEMENT WILSSA shall maintain insurance per the specifications and minimum limits set forth herein:

a. Commercial General Liability on an occurrence, as opposed to claims made, basis with general aggregate limit applicable per project and per location.

Each occurrence limit:\$1,000,000

General aggregate limit:\$2,000,000

Products/Completed operations aggregate limit:.....\$2,000,000

b. An additional insured provision is to apply to the TOWN and its respective officers, officials, agents, and employees on a primary, non-contributory basis.

c. Automobile liability for owned, hired, and non-owned autos with combined single limit each accident of \$1,000,000. An additional insured, or designated insured, provision is to apply to the TOWN and its respective officers, officials, agents, and employees.

d. If there are any employees, workers' compensation insurance to comply with the requirements of Maine statute, plus employers' liability for:

Each Accident:.....\$1,000,000

Each Employee (disease):.....\$1,000,000

Policy Limit (disease):.....\$ 500,000

f. If required by Federal Statute, coverage to comply with the Longshore and Harbor Workers' Compensation Act (33 USC Sections 901-950) and/or Merchant Marine Act, 1920 (46 USC Section 688) commonly referenced as the "Jones Act".

g. All policies required by this AGREEMENT are to be provided by a company, or companies, admitted to conduct business in the State of Maine. All policies shall be so written that the Kittery Town Manager will be notified of cancellation at least ten (10) days prior to the effective date of such cancellation. A certificate of insurance from WILSSA's insurance carrier showing at least the coverage and limits of liability specified above and the inception and expiration dates must be filed with the Town Manager at least seven (7) calendar days before operations are begun.

h. WILSSA agrees to require that any written Agreements between WILSSA and any of its service or material provider(s) will require the same provisions, coverages, and limits as in this Article 18. WILSSA shall obtain an endorsement to its Commercial General Liability policy to cover WILSSA's obligations under this Article.

19. Assignment and Subletting:

WILSSA shall not assign this Agreement or any interest therein, nor let or sublet the said PREMISES or any part thereof or any right or privilege appurtenant thereto, nor permit the occupancy or use of any part thereof by any other person. Said let or underlet is grounds for termination of this AGREEMENT by the TOWN or possible reversion by the USA. This provision does not preclude WILSSA from contracting with other vendors, to assist in operating the STATION, such as the docent program, or charter boat operators to transport visitors to and from Wood Island.

20. Amendment to Concession Agreement:

This AGREEMENT contains all the terms and conditions between the parties, and no alteration, amendment, or addition is valid unless in writing and signed by WILSSA and approved by a majority vote of the full Kittery Town Council, with written concurrence by the Secretary of the Interior or designee.

21. Laws and Regulations:

WILSSA is aware of and agrees that it will use the PREMISES so as to conform with deeded environmental and usage controls and not violate any laws, regulations and /or requirements of the United States of America and/or State of Maine and/or any ordinance, rule or regulation of the TOWN now or hereafter made, relating to the use of the PREMISES. This AGREEMENT is also governed and interpreted by Maine law.

22. Signage:

WILSSA shall place no sign or advertisement upon any location of the property unless prior written approval has been granted in accordance with TOWN ordinance and the TOWN has the right, without first notifying WILSSA, to remove at the expense of WILSSA, any sign or signs that may be erected without prior approval.

23. Surrender; Waste:

WILSSA agrees that upon expiration of this AGREEMENT or earlier termination thereof, it shall surrender the PREMISES to the TOWN in as good or better condition as they were in at the time of execution of this document, ordinary wear excepted. WILSSA further agrees that it shall permit no waste nor suffer the same to be committed, nor injure nor misuse the PREMISES.

24. Liens:

WILSSA shall keep the PREMISES free from any and all liens arising out of any work performed, materials furnished, or obligations incurred by WILSSA during the term of this AGREEMENT, or any extension or renewal thereof.

25. Waiver:

Failure of either party to complain of any act or omission on the part of the other party, no matter how long the same may continue, is not deemed to be a waiver by said party of any of said party's rights hereunder. No waiver by either party at any time, expressed or implied, of any breach of any provision of this AGREEMENT may be deemed a waiver of breach of any other provision of this AGREEMENT or a consent to any subsequent breach of the same or any other provision. If any action by either party requires the consent and approval of the other party, the other party's consent to or approval of such action on any one occasion may not be deemed to be a consent to or approval of said action on any subsequent occasion.

Any and all rights and remedies which either party may have under this AGREEMENT, upon any breach, are distinct, separate, and cumulative, and may not be deemed inconsistent with each other; and no one of them, whether exercised by said party or not, may be deemed to be an exclusion of any other.

26. Termination:

A. TOWN may terminate this AGREEMENT:

This AGREEMENT terminates automatically upon the occurrence of any of the following events:

1. With unilateral termination upon 30 days written notice for cause and specifying the date of termination.
2. If WILSSA fails to comply with any of the material terms and conditions of this AGREEMENT.
3. Upon expiration of the term of this Agreement or any renewal thereof.
4. If WILSSA ceases to be an active, functioning nonprofit corporation registered to do business under the laws of the State of Maine.
5. "Cause" in this agreement means:
 - (i) an intentional act of fraud, embezzlement, theft or any other material violation of law that occurs during or in the course of WILSSA performance under this agreement;
 - (ii) intentional damage to the TOWN's assets;
 - (iii) intentional engagement in any activity which would constitute a breach of WILSSA's duty of loyalty or of its obligations under this agreement;
 - (iv) the willful and continued failure to substantially perform the duties of this agreement; or
 - (v) willful conduct by WILSSA that is demonstrably and materially injurious to the TOWN, monetarily or otherwise.

For purposes of this paragraph, an act, or a failure to act, is not deemed willful or intentional, as those terms are defined herein, unless it is done, or omitted to be done, by WILSSA in bad faith or without a reasonable belief that the action or omission was in the best interest of the TOWN.

B. WILSSA may terminate this AGREEMENT:

1. If the TOWN fails to comply with any of the material terms and conditions of this AGREEMENT.
2. Upon expiration of the term of this Agreement or any renewal thereof.

C. Voluntary Termination

If there is significant damage to the STRUCTURES from fire (including arson), flood, lightning, wind, wave or any act of God beyond the WILSSA's control during the course of this AGREEMENT, WILSSA will estimate the cost of the damage. If those costs exceeded 75% of the cost of replacement of any one of the STRUCTURES so damaged, or portion thereof, that WILSSA is unable or unwilling to repair at its own expense, WILSSA reserves the right to terminate this contract without penalty.

In the event of damage to the structures as described above, the TOWN will inquire of WILSSA if it intends to exercise its right of voluntary termination. WILSSA will answer such an inquiry from the TOWN, when notified, within sixty 60 days; and, if planning to repair the damage at its own expense will provide a plan of work with timetable to complete the repairs. The TOWN will accept the plan of work and timetable under the same terms and conditions as are in this AGREEMENT and WILSSA shall then implement the plan.

D. Notice and Cure

Notwithstanding the foregoing, it is a condition precedent to the TOWN's or WILSSA's right to terminate this agreement for "cause", without prejudice to any other rights or remedies of the PARTIES:

- (i) the party seeking termination shall first have given the other party written notice stating with specificity the reason for the termination ("breach"); and
- (ii) if such breach is susceptible of cure or remedy, a period of thirty (30) days from and after the giving of such notice elapses without the breaching party having effectively cured or remedied such breach during such 30-day period, unless such breach cannot be cured or remedied within thirty (30) days, in which case the period for remedy or cure is to be extended for a reasonable time (not to exceed an additional thirty (30) days) provided the breaching party has made and continues to make a diligent effort to effect such a remedy or cure.

27. Acknowledgement:

This AGREEMENT and the obligations of the parties hereto are subject to the terms and conditions set forth in the Deed from the USA to the TOWN, dated the 27th day of February, 1973, and recorded at York County Registry of Deeds/Clerks Office at Book 1985, page 201; and, the current Program of Utilization which governs the use of the PREMISES. Violations of the said terms and conditions may be grounds for reversion to the United States of America, at its discretion, and termination of this Agreement. WILSSA-owned personal and real property improvements associated with the real property, may be subject to seizure, without compensation, by the USA.

28. (M) Notice:

Any notice is required to be given under the terms of this License, such notice must be in writing and either hand delivered or mailed by certified mail, return receipt requested:

To TOWN:	To WILSSA:
TOWN MANAGER	WOOD ISLAND LIFE SAVING STATION ASSOC
200 ROGERS ROAD	P.O. BOX 11
KITTERY, ME 03904	KITTERY POINT, ME 03905

or to such other addresses as WILSSA or TOWN designate for themselves in the same manner.

Any notice related to the requirements of Section 106 of National Historic Preservation Act of 1966 (NHPA) (16 USC. §470f), or 36 CFR Part 800, "Protection of Historic Properties", must also be given to the State Historic Program Office: Maine Historic Preservation Commission, 55 Capitol Street, 65 State House Station, Augusta, Maine 04333

29. Other Terms and Conditions

A. Dispute Resolution

Any dispute between the parties arising out of or relating to this AGREEMENT must be resolved in accordance with this Article. Any party may give written notice of a dispute arising out of or related to this Agreement to the other party in person or by certified mail, return receipt requested. The parties must attempt to resolve the matter through informal communication or negotiation for a period of thirty (30) days from the date of receipt of notice by the last party to receive notice. If the dispute has not been resolved within thirty (30) days, either party may serve written notice on the other party of a request for mediation. If the parties mutually agree to mediation, the mediation must be conducted in Maine by a mediator mutually agreeable to the parties, must not exceed one full day or two half days in length, and must be completed within forty-five (45) days from the date of receipt of notice of a request for mediation by the last party to receive notice.

In the event that the parties are unable to agree on a mediator within thirty (30) days, or to resolve the dispute through mediation within 45 days, the dispute may be submitted to arbitration with the written concurrence of both PARTIES in accordance with the procedures of the Maine Uniform Arbitration Act, 14 M.R.S. §5927 et seq. Nothing in this provision precludes either party from seeking all available legal or equitable remedies following mediation if it is held and arbitration is not agreed to by both PARTIES.

B. Rescission & Supersession

The Agreement between the TOWN and WILSSA, dated January 25th, 2016, is superseded and rescinded as from the effective date of this AGREEMENT.

This Agreement represents the entire and integrated Agreement between the PARTIES and supersedes all prior negotiations, representations, or Agreements either written or verbal. This AGREEMENT may be amended only by a written modification in accordance with Section 20, above.

C. Severability of Provisions

If any provision or any portion thereof contained in this AGREEMENT is held unconstitutional, invalid or unenforceable by a court of jurisdiction, the remainder of this AGREEMENT shall be deemed severable, shall not be affected, and shall remain in full force and effect.

D. Captions:

The captions to the paragraphs herein are for convenience only and are not to be deemed inclusive; the Concession Agreement must be interpreted based upon its entire context.

IN WITNESS WHEREOF, the municipal officers of the Town of Kittery have authorized its Town Manager representing the TOWN to sign this AGREEMENT and WILSSA has approved the AGREEMENT and signed as of the date first noted above.

WITNESS: KITTERY, MAINE (OWNER)

BY: _____

[Name][Title][Address] [Town, State, Zip Code]

WITNESS: WOOD ISLAND LIFE STATION ASSOCIATION

BY: _____

[Name][Title][Address] [Town, State, Zip Code]

EXHIBIT A: 1973 Quitclaim Deed - Wood Island, Book 1985, Page 201 - §1, 2, 14

EXHIBIT B: National Maritime Heritage Grant Program Preservation Agreement, 08/10/15 - §4, 12, 15, 29B

EXHIBIT C: Historic Registry Determination of Eligibility - §12

UPON ISSUE: CERTIFICATE OF OCCUPANCY

RTC- ENCLOSURE 3 - NPS PM RESPONSE

From: **LaForest, Elyse** <elyse_laforest@nps.gov>
Date: Fri, Jun 24, 2016 at 1:21 PM
Subject: Re: Wood Island Agreements - Final Drafts
To: Gary Beers <gbeers.ktc@gmail.com>

I have reviewed the attached agreements. Both are acceptable to the National Park Service should the Town of Kittery and WILSSA approve and sign them.

If (when) these documents are accepted by both parties, please furnish me with signed copies.

Thank you for working through this process. I agree, these documents are far clearer (for all parties) than the ones originally presented. I appreciate the Town's and WILSSA efforts not only on this paperwork, but especially on the restoration of the Lifesaving Station.

Sincerely,

Elyse LaForest

COPY QUITCLAIM DEED

The UNITED STATES OF AMERICA, acting by and through the Regional Director, Northeast Region, Bureau of Outdoor Recreation, with offices at 1421 Cherry Street, Philadelphia, Pennsylvania, pursuant to authority delegated by the Secretary of the Interior, and as authorized by the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, and particularly as amended by Public Law 91-485 (84 Stat. 1084), and regulations and orders promulgated thereunder (hereinafter referred to as Grantor), for and in consideration of the use and maintenance of the property herein conveyed for public park and public recreation purposes in perpetuity by the Town of Kittery, Maine (hereinafter referred to as Grantee), does hereby remise, release, and quitclaim to Grantee, its successors and assigns, subject to the reservations, exceptions, restrictions, conditions and covenants hereinafter set forth, all right, title and interest of the Grantor in and to all that tract or parcel of land known as Wood Island, situated near the mouth of the Piscataqua River, County of York, State of Maine.

The property herein conveyed contains 1.25 acres, more or less, and was formerly known as the Old Portsmouth Harbor Lifeboat Station, U-Me-449A, under the administrative jurisdiction of the Department of Transportation, an agency of the United States Government.

TOGETHER WITH the appurtenances, the buildings and improvements thereon, and all the estate and rights of the Grantor in and to said premises.

SUBJECT TO any and all outstanding reservations, easements and rights-of-way, recorded and unrecorded, for public roads, railroads, pipelines, drainage ditches, sewer mains and lines, and public utilities affecting the property herein conveyed.

TO HAVE AND TO HOLD the above premises, subject to the easements, reservations, exceptions, restrictions, conditions, and covenants herein enumerated and set forth, unto the Grantee, its successors and assigns, forever.

There are excepted from this conveyance and reserved to the Grantor, all oil, gas, and other minerals in, under, and upon the lands herein conveyed, together with the right to enter upon the land for the purpose of mining and removing the same.

Pursuant to authority contained in the Federal Property and Administrative Services Act of 1949, as amended, and applicable rules, regulations and orders promul-

gated thereunder, the General Services Administration determined the property to be surplus to the needs of the United States of America and assigned the property to the Department of the Interior for conveyance to the Town of Kittery, Maine.

It is understood and agreed by and between the Grantor and Grantee, and Grantee, by acceptance of this deed does acknowledge that it fully understands the terms and conditions set forth herein and does further covenant and agree for itself, and its successors and assigns, forever, as follows:

1. The property shall be used and maintained for the public purposes for which it was conveyed in perpetuity as set forth in the program of utilization and plan contained in the application submitted by Grantee on the 25th day of October, 1972, as amended the 27th day of November, 1972, which program and plan may be further amended from time to time at the request of either the Grantor or Grantee, with the written concurrence of the other party, and such amendments shall be added to and become a part of the original application.

2. The Grantee shall within 6 months of the date of this deed erect and maintain a permanent sign or marker near the point of principal access to the conveyed area indicating that the property is a park or recreational area and has been acquired from the Federal Government for use by the general public.

3. The property shall not be sold, leased, assigned, or otherwise disposed of except to another eligible governmental agency that the Secretary of the Interior agrees in writing can assure the continued use and maintenance of the property for public park or public recreational purposes subject to the same terms and conditions in the original instrument of conveyance. However, nothing in this provision shall preclude the Grantee from providing related recreational facilities and services compatible with the approved application, through concession agreements entered into with third parties, provided prior concurrence to such agreements is obtained in writing from the Secretary of the Interior.

4. From the date of this conveyance, the Grantee, its successors and assigns, shall submit biennial reports to the Secretary of the Interior, setting forth the use made of the property during the preceding two-year period, and other pertinent data

establishing its continuous use for the purposes set forth above, for ten consecutive reports and as further determined by the Secretary of the Interior.

5. If at any time the United States of America shall determine that the premises herein conveyed, or any part thereof, are needed for the national defense, all right, title and interest in and to said premises, or part thereof determined to be necessary to such national defense, shall revert to and become the property of the United States of America.

6. As part of the consideration for this deed, the Grantee covenants and agrees for itself, its successors and assigns, that (1) the program for or in connection with which this deed is made will be conducted in compliance with, and the Grantee, its successors and assigns, will comply with all requirements imposed by or pursuant to the regulations of the Department of the Interior as in effect on the date of this deed (43 C.F.R. Part 17) issued under the provisions of Title VI of the Civil Rights Act of 1964; (2) this covenant shall be subject in all respects to the provisions of said regulations; (3) the Grantee, its successors and assigns, will promptly take and continue to take such action as may be necessary to effectuate this covenant; (4) the United States shall have the right to seek judicial enforcement of this covenant; (5) the Grantee, its successors and assigns, will (a) obtain from each other person (any legal entity) who through contractual or other arrangements with the Grantee, its successors or assigns, is authorized to provide services or benefits under said program, a written agreement pursuant to which such other persons shall, with respect to the services or benefits which he is authorized to provide, undertake for himself, the same obligations as those imposed upon the Grantee, its successors and assigns, by this covenant, and (b) furnish a copy of such agreement to the Secretary of the Interior, or his successor; and that this covenant shall run with the land hereby conveyed, and shall in any event, without regard to technical classification or designation, legal or otherwise, be binding to the fullest extent permitted by law and equity for the benefit of, and in favor of the Grantor and enforceable by the Grantor against the Grantee, its successors and assigns.

7. In the event there is a breach of any of the conditions and covenants herein contained by the Grantee, its successors and assigns, whether caused by the

legal or other inability of the Grantee, its successors and assigns, to perform said conditions and covenants, or otherwise, all right, title, and interest in and to the said premises shall revert to and become the property of the Grantor at its option, which in addition to all other remedies for such breach shall have the right of entry upon said premises, and the Grantee, its successors and assigns, shall forfeit all right, title and interest in said premises and in any and all of the tenements, hereditaments and appurtenances thereunto belonging; provided, however, that the failure of the Secretary of the Interior to require in any one or more instances complete performance of any of the conditions or covenants shall not be construed as a waiver or relinquishment of such future performance, but the obligation of the Grantee, its successors and assigns, with respect to such future performance shall continue in full force and effect:

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed in its name and on its behalf this the 27th day of February, 1973

UNITED STATES OF AMERICA

BY

Maurice D. Arnold
Regional Director
Northeast Region
Bureau of Outdoor Recreation
1421 Cherry Street
Philadelphia, Pennsylvania

STATE OF Pennsylvania }
COUNTY OF Philadelphia } ss

On this 27th day of February, 1973, before me, the subscriber, personally appeared Maurice D. Arnold, to me known and known to me to be the Regional Director, Northeast Region, Bureau of Outdoor Recreation, of the United States Department of the Interior, a governmental agency of the United States of America, with offices at 1421 Cherry Street, Philadelphia, Pennsylvania, and known to me to be the same person described in and who executed the foregoing instrument as such Regional Director aforesaid, as the act and deed of the United States of America, for and on behalf of the Secretary of the Interior, duly designated, empowered and authorized so to do by said Secretary, and he acknowledged that he executed the foregoing instrument for and on behalf of the United States of America, for the purposes and uses therein described.

Carol A. Beecher
NOTARY PUBLIC

My Commission expires:

CAROL ANN BEECHER, NOTARY PUBLIC
PHILADELPHIA, PHILADELPHIA COUNTY
MY COMMISSION EXPIRES OCT. 13, 1975
Member, Pennsylvania Association of Notaries

The foregoing conveyance is hereby accepted and the undersigned agrees,
by this acceptance, to assume and be bound by all the obligations, conditions,
covenants and agreements herein contained.

TOWN OF KITTEERY, MAINE

By John R. Kennedy
Town Manager
Title

STATE OF Maine)
COUNTY OF York) ss

Then personally appeared the above named John R. Kennedy,
Town Manager, of the Town of Kittery, Maine, and acknowledged that he
executed the foregoing instrument as his free act and deed in his said capacity
for the purposes therein contained.

Before me,

York, ss.

Received MAR 22 1973 at 9:25 AM
and recorded from the original.

Dorothy Knight
Notary Public
Title

QUITCLAIM DEED COPY

The UNITED STATES OF AMERICA, acting by and through the Regional Director, Northeast Region, Bureau of Outdoor Recreation with offices at 1421, Cherry Street, Philadelphia, Pennsylvania, pursuant to authority delegated by the Secretary of the Interior, and as authorized by the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, and particularly as amended by Public law 91-485. (84 Stat. 1084), and regulations and orders promulgated thereunder (hereinafter referred to as Grantor), for and in consideration of the use and maintenance of the property herein conveyed for public park and public recreation purposes in perpetuity by the Town of Kittery, Maine (hereinafter referred to as Grantee) does hereby remise release, and quitclaim to Grantee, its successors and assigns, subject to the reservations, exceptions, restrictions, conditions and covenants hereinafter set forth, all right, title and interest of the Grantor in and to all that tract or parcel of land known as Wood Island, situated near the mouth of the Piscataqua River, County of York, State of Maine.

The property herein conveyed contains 1.25 acres, more or less, and was formerly known as the Old Portsmouth Harbor Lifeboat Station, U-Me-449A, under the administrative jurisdiction of the Department of Transportation, an agency of the United States Government.

TOGETHER WITH the appurtenances, the buildings and improvements thereon, and all the estate and rights of the Grantor in and to said premises

SUBJECT TO any and all outstanding reservations, easements and rights-of-way, recorded and unrecorded, for public roads, railroads, pipelines, drainage ditches, sewer mains and lines, and public utilities affecting the property herein conveyed.

TO HAVE AND TO HOLD the above premises, subject to the easements, reservations, exceptions, restrictions, conditions, and covenants herein enumerated and set forth, unto the Grantee, its successors and assigns, forever.

There are excepted from this conveyance and reserved to the Grantor, all oil, gas, and other minerals in, under, and upon the lands herein conveyed, together with the right to enter upon the land for the purpose of mining and removing the same.

Pursuant to authority contained in the Federal Property and Administrative Services Act of 1949, as amended, and applicable rules, regulations and orders promulgated thereunder, the General Services Administration determined the property to be surplus to the needs of the United States of America and assigned the property to the Department of the Interior for conveyance to the Town of Kittery Maine.

It is understood and agreed by and between the Grantor and Grantee, and Grantee, by acceptance of this deed does acknowledge that it fully understands the terms and conditions set forth herein and does further covenant and agree for itself, and its successors and assigns, forever, as follows:

1. The property shall be used and maintained for the public purposes for which it was conveyed in perpetuity as set forth in the program of utilization and plan contained in the application submitted by Grantee on the 25th day of October, 1972, as amended the 27th day of November, 1972, which program and plan may be further amended from time to time at the request of either the Grantor or

38 Grantee, With the written concurrence of the other party and such amendments shall be added to and
39 become a part of the original application.

40 2. The Grantee shall within 6 months of the date of this deed erect and maintain a permanent sign or
41 marker near the point of principal access to the conveyed area indicating that the Property is-park or
42 recreational area and has been acquired from .the Federal Government for use by the general public.

43 3. The property shall not be sold, leased, assigned, or otherwise disposed of except to another eligible
44 governmental agency that the Secretary of the Interior agrees in writing can assure the continued use
45 and maintenance of the property' for public park or public recreational purposes subject to the same
46 terms and conditions in the original instrument of conveyance However, nothing in this provision shall
47 preclude the Grantee from providing related recreational facilities and services compatible with the
48 approved application, through concession agreements entered-into with third parties, provided prior
49 concurrence to such agreements is obtained in writing from the Secretary of the Interior.

50 4. From the date of this conveyance, the Grantee, its successors and assigns, shall sub it biennial reports
51 to the Secretary of the Interior, setting forth the use made of the property during the preceding two-
52 year period, and other pertinent data establishing its continuous use for the purposes set forth above,
53 for ten consecutive reports and as further determined by the Secretary of the Interior.

54 5. If at any time the United States of America shall determine that the premises herein conveyed, or any
55 part thereof, are needed for the national defense, all right, title and interest in and to said premises, or
56 part thereof determined to be necessary to such national defense, shall revert to and become the
57 property of the United States of America.

58 6. As part of the consideration for this deed, the Grantee covenants and agrees for itself, its successors
59 and assigns, that

60 (1) the program for, or in connection with, which this deed is made will be conducted in compliance
61 with; and the Grantee, its successors and assigns, will comply with all requirements imposed by or
62 pursuant to the regulations of the Department of the Interior as in effect on the date of this deed (43
63 C.F.R. Part 17) issued under the provisions of Title VI of the Civil Rights Act of 1964;

64 (2) this covenant shall be subject in all respects to the provisions of said regulations;

65 (3) the Grantee, its successors and assigns, will promptly take and continue to take such action as may
66 be necessary to effectuate this covenant;

67 (4) the United States shall have the right to seek judicial enforcement of this covenant;

68 (5) the Grantee, its successors and assigns, will

69 (a) obtain from each other person (any legal entity) who through contractual or other arrangements
70 with the Grantee, its successors or assigns, is authorized to provide services or benefits under said
71 program, a written agreement pursuant to Which such other persons shall; With respect to the services
72 or benefits Which he is authorized to provide, undertake for himself, the same obligations as those
73 imposed upon the Grantee, its successors and assigns; by this covenant, and

(b) furnish a copy of such agreement to the Secretary of the Interior, or his successor; and that this covenant shall run with the land hereby conveyed, and shall in any event, without regard to technical classification or designation, legal or otherwise, be binding to the fullest extent permitted by law and equity for the benefit of, and in favor of the Grantor and enforceable by the Grantor against the Grantee, its successors and assigns.

7. In the event there is a breach of any of the conditions and covenants herein contained by the Grantee, its successors and assigns, whether caused by the legal or other inability of the Grantee, its successors and assigns, to perform said conditions and covenants, or otherwise, all right, title, and interest in and to the said premises shall revert to and become the property of the Grantor at its option, which in addition to all other remedies for such breach shall have the right of entry upon said premises and the Grantee, its successors and assigns, shall forfeit all right, title and interest in said premises and in any and all of the tenements, hereditaments and appurtenances thereunto belonging; provided, however, that the failure of the Secretary of the Interior to require in any one or more instances complete performance of any of the conditions or covenants shall not be construed as a waiver or relinquishment of such future performance, but the obligation of the Grantee, its successors and assigns, with respect to such future performance shall continue in full force and effect:

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed in its name and on its behalf this the 27th day of February 1973.

WOOD ISLAND PROGRAM OF UTILIZATION – UNOFFICIAL RETYPED EXCERPT

Part “B” of the Application Dated October 25, 1972

(1) Description of Property:

Old Portsmouth Harbor Lifeboat Station
Wood Island
Kittery, Maine
(U-Me-449A) 1.25 ± acres

The above-mentioned island is situated in the mouth of the Piscataqua River approximately 1200 feet from shore directly off Fort Foster Park. It is approximately 900 feet long and 400 feet wide. (See sketch).

It contains no roads or utilities; the buildings are the former Lifeboat Station.

There would not be any necessity for easements, etc.

(2) Need.

The Town of Kittery and surrounding area, like many, are in dire need of access to water, plus places that people can go ashore from boats and have picnics and cook-outs.

Wood Island has, since its closure, been used by many boaters for outings.

The Town of Kittery, through its Parks & Recreation Commission, has been developing Ft. Foster as a first class facility for the use of the general public.

At Fort Foster we have recently completed a second pavilion and pit for clam bakes. This is in addition to fireplaces, picnic tables, reclaiming an additional sandy beach, and addition of roads and pathway for better accessibility by the public.

Wood Island is central to a large population center, in addition there are ever-increasing numbers of boaters.

The island is accessible by boat and is on the way to Isles of Shoals from Great bay and other boating areas in the Piscataqua River area.

With this acquisition, this area could be taken care of and in the future, facilities constructed for general use.

(The) ultimate disposition and future of the buildings would have to depend on future visits and review of structural problems, etc.

The Town of Kittery, through its Parks & Recreation Commission, has the ability to institute a recreation program and it would be funded through taxation plus fees collected at Ft. Foster.

The Commission budget for 1972 was approximately \$18,000. It is proposing to increase this to approximately \$30,000 for 1973.

Aug 10. 7:40 PM
2015

**NATIONAL MARITIME HERITAGE GRANT PROGRAM
PRESERVATION AGREEMENT**

THIS CONVEYANCE is made this ____ day of ____, 2015 pursuant to 33 MRSA §§ 1551-1555 by and between the Town of Kittery, having its location at 200 Rogers Road, Kittery, Maine, hereinafter sometimes called the Grantor, and the State of Maine through the Director of the Maine Historic Preservation Commission, hereinafter sometimes called the Grantee.

WITNESSETH

WHEREAS THE Grantor is owner of certain premises known as the Wood Island Life Saving Station, Wood Island, Kittery, York County, Maine, which premises is eligible to be listed in the National Register of Historic Places (National Register) under the National Historic Preservation Act of 1966 (P.L. 89665, 16 U.S.C. § 470a, *et. seq.*); and

WHEREAS THE sum of \$200,000 in grant-in-aid financial assistance from the National Park Service of the United States Department of the Interior has been granted to the Wood Island Life Saving Station Association (WILSSA) for the purpose of preserving the Wood Island Life Saving Station, a building that is important culturally, historically, and/or architecturally; and

WHEREAS THIS preservation easement is granted as a condition of the eligibility of WILSSA for the financial assistance from the National Park Service of the United States Department of the Interior appropriated from the National Maritime Heritage grant program; and

WHEREAS THE State of Maine through the Director of the Maine Historic Preservation Commission is presently responsible for precluding any activity or omission at the premises which would destroy or impair its value to the public as an historic place; and

WHEREAS THE Grantor is willing to grant to the State of Maine the preservation interest as hereinafter expressed for the purpose of insuring that the value of the premises for such purposes will not be destroyed or impaired.

NOW THEREFORE in consideration of the sum of One Dollar and other valuable consideration paid to the Grantor, the receipt whereof is hereby acknowledged, the Grantor does hereby give, grant, bargain, sell and convey, with covenant of warranty, to the State of Maine a preservation interest in the following described lots or parcel of land, with the buildings and improvements thereon (the real property together with the buildings and improvements thereon and the fixtures attached thereto and the appurtenances thereof, being hereinafter collectively referred to as the "Property") located in Kittery, York County, Maine and described in the York County Registry of Deeds, Book __, Page ____.

The preservation interest herein granted shall be of the nature and character hereinafter expressed and shall be binding upon the Grantor; its successors and assigns.

The Property is comprised of grounds, collateral or appurtenant improvements, and the Wood Island Life Saving Station building (hereinafter referred to as the "Building").

In order to make more certain the full extent of Grantor's obligations and the restrictions on the Property, and in order to document the nature and condition of the Property, including significant interior elements in spatial context, a list of character-defining materials, features, and spaces is incorporated as Exhibit "A" at the end of this agreement. To complement Exhibit "A", Grantor personnel have compiled a photographic record, including photographer's affidavit, black and white photographs and negatives, or electronic image files saved as high resolution images, photograph logs, and a keyed location map. The Grantor agrees that the nature and condition of the Property on the date of execution of this easement is accurately documented by the architectural drawings and photographic record, which shall be maintained for the life of this easement in the Grantee's conservation easement file for the Property.

The foregoing description of the Property may be amended, replaced, or elaborated upon in more detail, and a description of the style, landscaping and similar particulars of the grounds, and any collateral or appurtenant improvements on the Property may be added, by an instrument in writing, signed by both parties hereto, making reference to this Preservation Agreement and filed of record in the York County Registry of Deeds. If and when such an instrument is placed of record, it shall be deemed to be a part of this Preservation Agreement as if set out herein.

For the purpose of preserving and protecting the Property, including its significance and value to the public as an historic place, the Grantor does hereby covenant and agree, on behalf of itself, its successors and assigns with the Grantee, its successors and assigns, to the following for a period of twenty (20) years beginning September 30, 2017 or when the exterior of the Building is restored, whichever comes first:

1. The Grantor agrees to assume the cost of continued maintenance and repair of the exterior of the Building, in accordance with *The Secretary of the Interior's Standards for the Treatment of Historic Properties* (see 36 CFR Part 68), so as to preserve the architectural and historical, integrity of the Building as documented by the Final Project Report at the conclusion of the grant period. Nothing in this agreement shall prohibit the Grantor from seeking financial assistance from any source available to him.
2. No construction, alteration, remodeling, changes of color or surfacing, or any other thing shall be undertaken or permitted to be undertaken on the Property which would affect the structural integrity, the appearance, the cultural use, or archaeological value of the Property without the express prior written approval of the State of Maine through the Director of the Maine Historic Preservation Commission, or any successor agency.
3. Grantee, its agents and designees shall have the right to inspect the Property at all reasonable times in order to ascertain whether or not the terms and conditions of this Preservation Agreement are being complied with.
4. Grantor agrees to permit public access to view the grant-assisted work no less than 12 days a year on an equitably spaced basis, weather permitting. The Grantor is not required to provide boat access. Nothing in this agreement will prohibit a reasonable nondiscriminatory admission fee, comparable to fees charged at similar facilities in the area.

5. In the event that the Property or any significant part of it shall be damaged or destroyed by fire, flood, windstorm, earth movement, or other casualty, the Grantor shall notify the Grantee in writing within 14 calendar days of the damage or destruction, such notification including what, if any, emergency work has already been completed. No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the Property and to protect public safety, shall be undertaken by the Grantor without the Grantee's prior written approval indicating that the proposed work will meet the Standards. The Grantee shall give its written approval, if any, of any proposed work within 60 days of receiving the request from the Grantor. If after reviewing the condition of the Property, the Grantee determines that the features, materials, appearance, workmanship, and environment (or setting) which made the Property significant, as documented by the Final Project Report as the conclusion of the grant period, have been lost or irreparably damaged, the Grantee will then notify the Grantor that the agreement is null and void. If the damage or destruction that results in the Property losing its significance is deliberately caused by the gross negligence or other actions of the Grantor or successor owner, then the Grantee will initiate requisite legal action to recover, at a minimum, the Federal grant funds applied to the Property which will then be returned to the U.S. Government.
6. The Grantor has agreed to comply with the Maine Human Rights Act (5 MRSA §§ 4551 *et seq.*).
7. The Grantor has agreed to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Americans with Disabilities Act (42 U.S.C. 12204), and with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). These laws prohibit discrimination on the basis of race, religion, national origin, or disability. In implementing public access, reasonable accommodation to qualified disabled persons shall be made in consultation with the Grantee.
8. If the Grantor fails to observe or if the Grantor violates any covenant, agreement, or provision contained herein, then the Grantee shall in addition to all other remedies available at law or in equity, have the right to enforce this Preservation Agreement, including each of its provisions, by specific performance or injunctive relief.
9. The Preservation Agreement set forth herein is intended by the parties hereto to preserve the historic integrity of the Property pursuant to the provisions of 33 MRSA §§ 1551-1555, or other provisions of law that may be applicable.
10. This Preservation Agreement provides the Grantee with additional legal rights and does not supercede or replace any pre-existing legal obligations of the Grantor or legal rights of the Grantee.
11. The Preservation Agreement set forth herein shall be binding upon and shall inure to the benefit of the Grantor and the Grantee and their respective successors and assigns. **TO HAVE AND, TO HOLD** the aforegranted and bargained Easement with all the privileges

and appurtenances thereof to the said State of Maine through the Director of the Maine Historic Preservation Commission, its successors and assigns, to its and their use and behoof for a period of twenty (20) years.

12. SEVERABILITY CLAUSE

It is understood and agreed by the parties hereto that if any part, term, or provision of this agreement is held to be illegal by the courts, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular part, term, or provision held to be invalid.

IN WITNESS WHEREOF, the Town of Kittery, signed by

Jeffrey D. Thomson, Jeffrey Pelletier, Charles Denault, Russell White,
Judy Spiller, and Kenneth F. Lemont, its officers
duly authorized and have hereunto set hand and seal for the purpose set forth above, all as of the
day and year first written above.

TOWN OF KITTERY

By See list of signatures
on the next page. Signed
in the wrong place.

Then personally appeared the above named Jeffrey D. Thomson, Jeffrey Pelletier,
Charles Denault, Russell White, Judy Spiller and Kenneth F. Lemont, of
the Town of Kittery, and acknowledged the foregoing instrument to be their free act and deed in
said capacity and the free act and deed of the Town of Kittery, Kittery, Maine.

Before me,

Margaret Flare 8/10/15
Notary Public Date
Exp. 4/11/2022

STATE OF MAINE

By Eileen S. [Signature]

Name: Earle G. Shettleworth, Jr.

Title: Director

Then personally appeared the above named Earle G. Shettleworth, Jr.
of the Maine Historic Preservation Commission, and acknowledged the foregoing instrument to
be his free act and deed.

Before me,

Claudette Cagne 9/2/15
Notary Public Date

6-1 vote

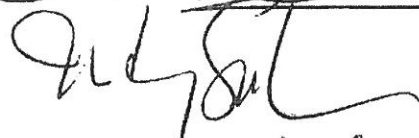
8/10/15

Jeff D. Thomson









Kenneth F. Xenont

KITTERY - WILSSA - WOOD ISLAND CONCESSION AGREEMENT - EXHIBIT C



MAINE HISTORIC PRESERVATION COMMISSION
55 CAPITOL STREET
65 STATE HOUSE STATION
AUGUSTA, MAINE
04333

PAUL R. LEPAGE
GOVERNOR

21 April 2015

EARLE G. SHETTLEWORTH, JR.
DIRECTOR

Sam Reid
Wood Island Life Saving Station Association
P.O. Box 11
Kittery Point Maine 03905

Dear Mr. Reid:

Thank you for submitting the National Register Eligibility Assessment form, photographs and other information pertaining to the Wood Island Life Saving Station in Kittery, Maine. These have been carefully examined by our staff.

I am pleased to say that in our judgment, based on the information and photographs submitted to date, this property is eligible for nomination to the National Register of Historic Places. The Station is eligible under Criterion A, Maritime History, for its association with the Life Saving Service and the Coast Guard between 1907-1941 and 1945-1948. Of particular importance is the presence of the marine railway – a feature that survives only rarely in association with these stations. The historic value of this structure helps to balance out the deteriorated conditions that had previously prevented the Commission from finding this property eligible. In addition, we feel that the Station meets National Register Criteria A in the area of Military History, for the key role it played in the defense of Portsmouth Harbor between 1941 and 1945. Taken together, the events associated with this Station have had a significant impact on the broad patterns of local history.

All nominations, before being sent to Washington for final approval, must first be presented to our Commission for approval at one of their quarterly meetings. We will schedule this nomination for presentation once a final draft of the nomination has been received and approved by this office. Once you have identified who will prepare your nomination please have them contact me at (207) 287-2132 or christi.mitchell@maine.gov to discuss scheduling and submission requirements.

In the meantime, the property will be included in the Maine Historic Resources Inventory which will provide the same protection as if it were already listed in the National Register. Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in dark ink that reads "Christi A. Mitchell".

Christi A. Mitchell
Architectural Historian

Enc.